TEXAS REGISTER

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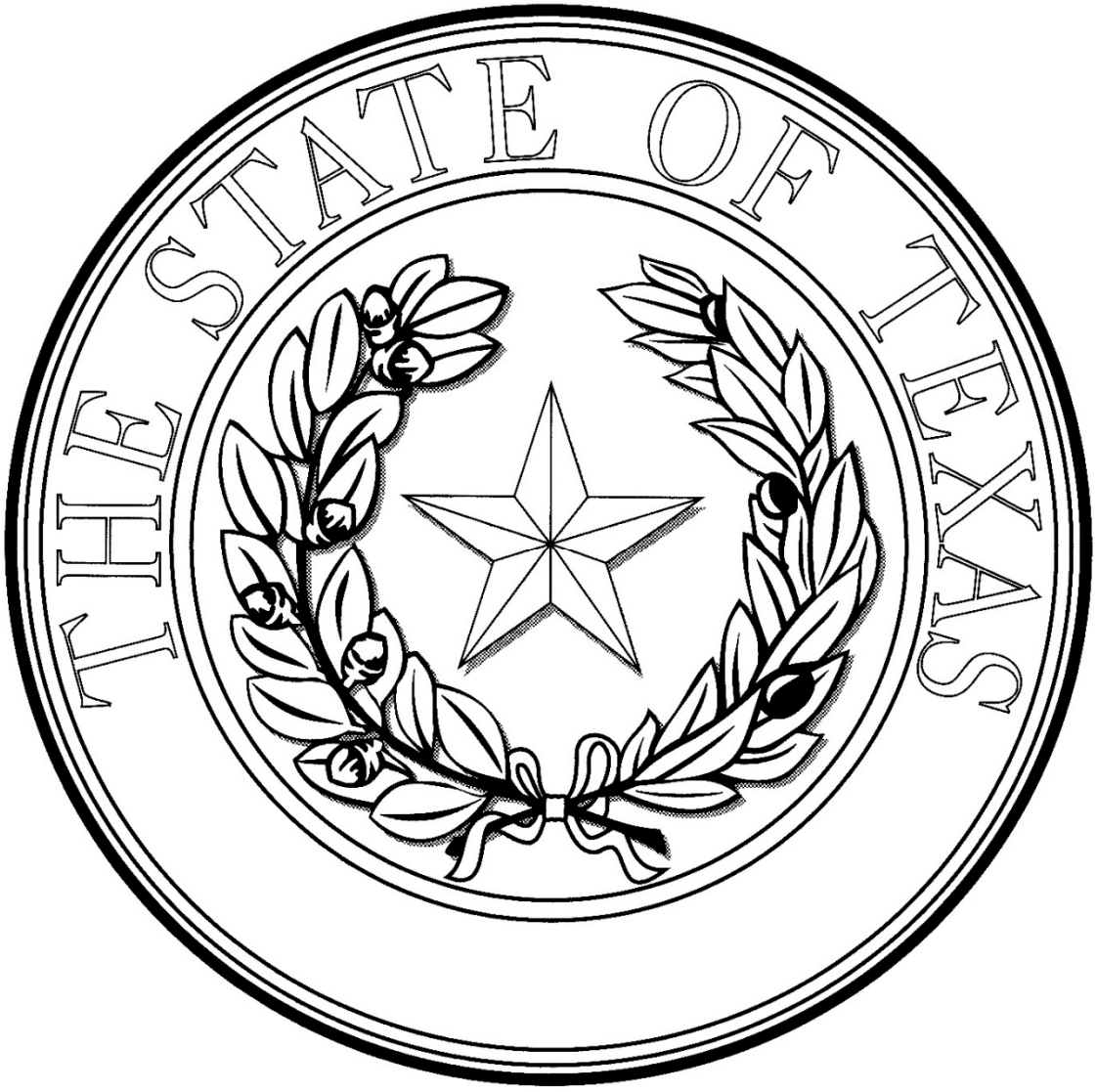

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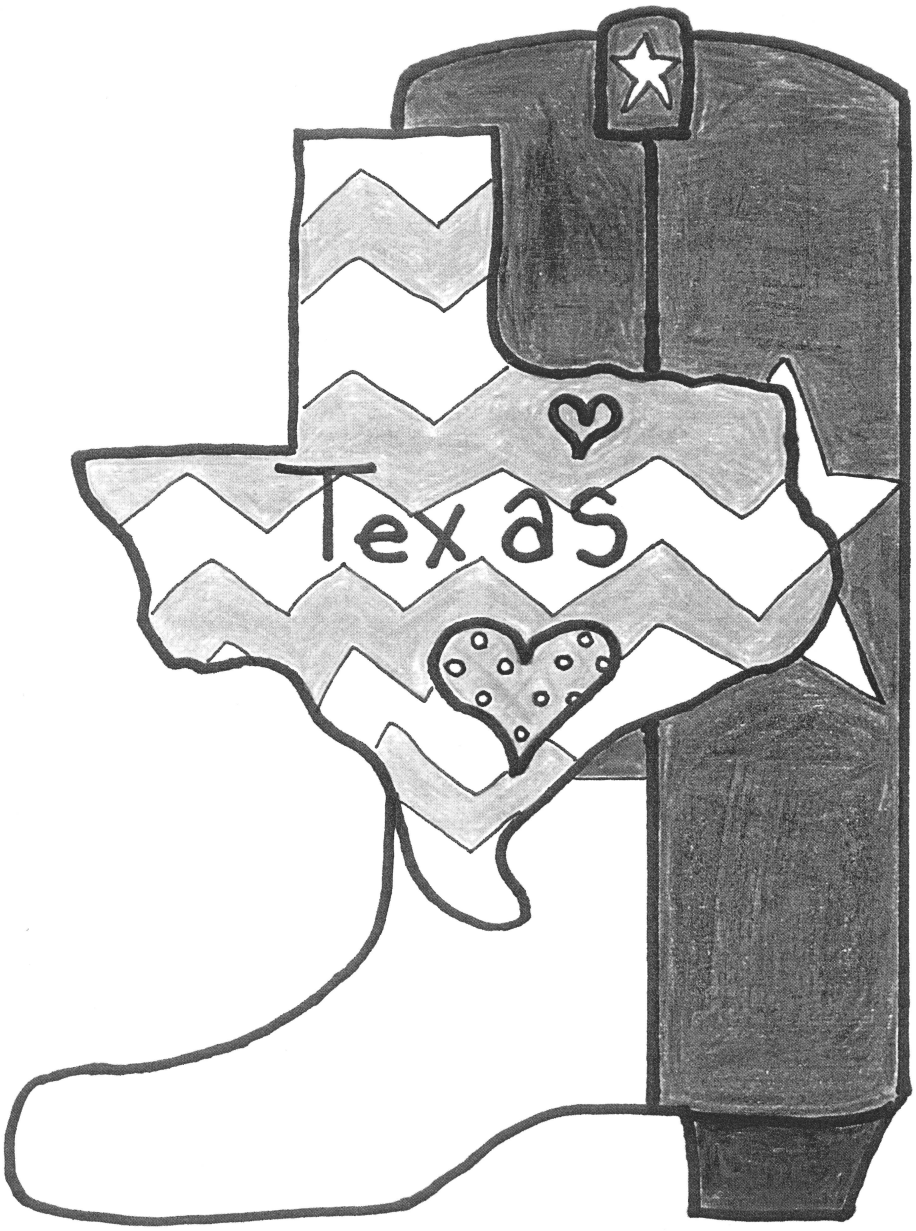
RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION


Texas

THE GOVERNOR

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

Appointments

Appointments for January 6, 2021

Appointed to the Nueces River Authority Board of Directors, for a term to expire February 1, 2021, Stacy L. Meuth of Floresville, Texas (replacing Travis W. Pruski of Floresville, who resigned).

Appointed to the Texas Board of Professional Geoscientists, for a term to expire February 1, 2021, LaFawn D. Thompson of New Braunfels, Texas (replacing Lindsey A. Lee of Edna, who resigned).

Appointed to the Texas Commission on the Arts, for a term to expire August 31, 2023, Patricia P. "Patty" Nuss of Corpus Christi, Texas (replacing Charles C. Gaines of Round Rock, who resigned).

Appointed to the Trinity River Authority Board of Directors, for a term to expire March 15, 2025, Kathryn L. "Kathy" Sanders of Athens, Texas (replacing Jess A. Laird of Athens, whose term expired).

Appointments for January 7, 2021

Appointed to the Commission on Jail Standards, for a term to expire January 31, 2021, Bryan D. Weatherford of Woodville, Texas (replacing Dennis D. Wilson of Groesbeck, who resigned).

Appointed to the Judicial Compensation Commission, for a term to expire February 1, 2025, Cynthia Olson "Cindy" Bourland of Round Rock, Texas (replacing Rebeca Aizpuru Huddle of Bellaire, who resigned).

Greg Abbott, Governor

TRD-202100108

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Appointments

Appointments for January 11, 2021

Appointed to the Board for Lease of Texas Department of Criminal Justice Lands, for a term to expire September 1, 2021, Erin E. Lunceford of Houston, Texas (Judge Lunceford is being reappointed).

Appointed to the Real Estate Research Advisory Committee, for a term to expire January 31, 2025, Vicki L. Fullerton of The Woodlands, Texas (replacing Stephen D. "Doug" Roberts of Austin, whose term expired).

Appointed to the Real Estate Research Advisory Committee, for a term to expire January 31, 2025, Walter D. "Ted" Nelson of The Woodlands, Texas (Mr. Nelson is being reappointed).

Appointed to the Real Estate Research Advisory Committee, for a term to expire January 31, 2025, Rebecca W. "Becky" Vajdak of Temple, Texas (replacing Christopher "Clark" Welder of Beeville, whose term expired).

Greg Abbott, Governor

TRD-202100189

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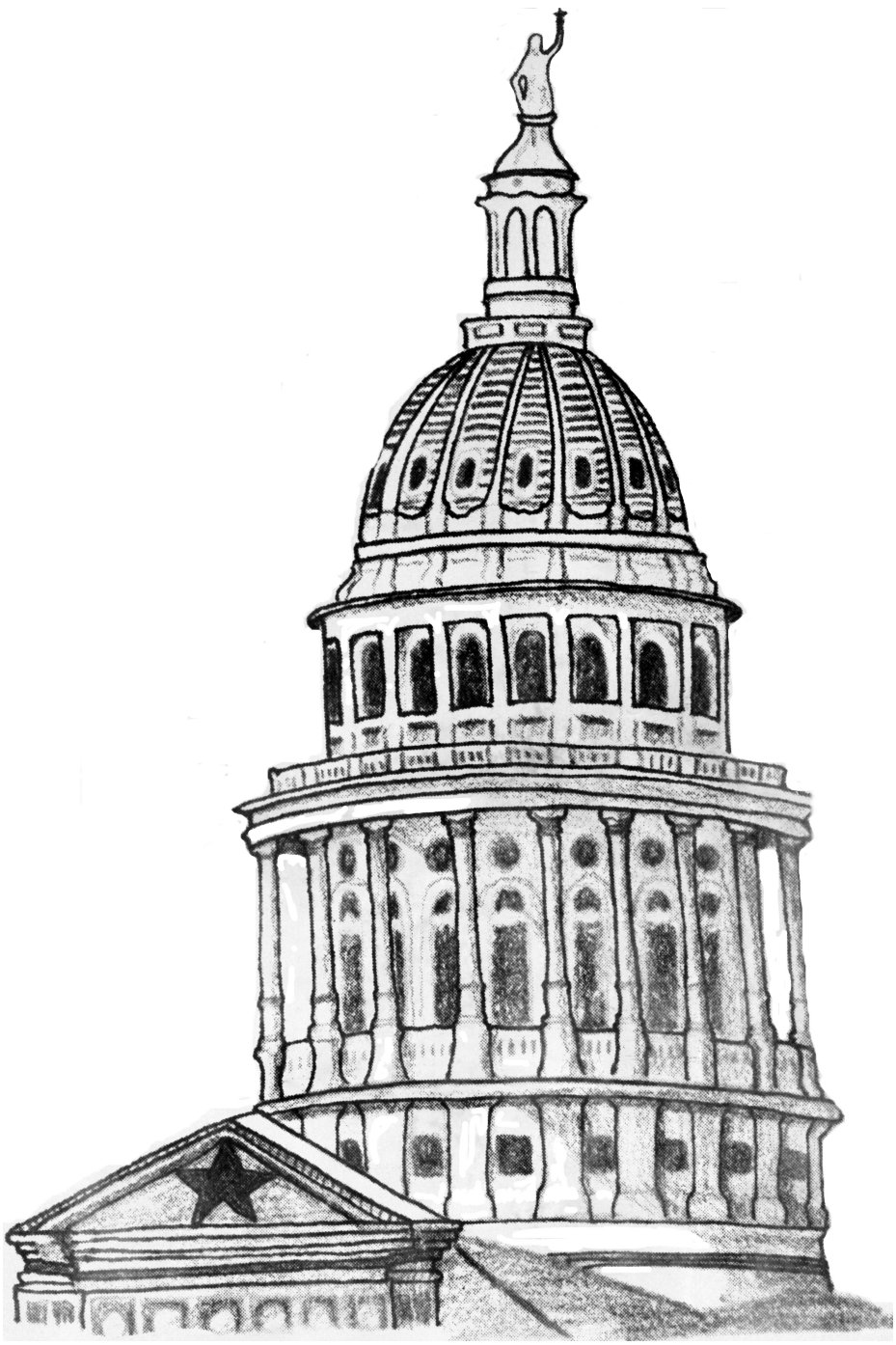

THE ATTORNEY GENERAL

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-0394-KP

Requestor:

The Honorable Will Thompson

Navarro County District Attorney

300 West 3rd Avenue, Suite 301

Corsicana, Texas 75110

Re: Eligibility of a newly elected constable under chapter 86 of the Government Code (RQ-0394-KP)

Briefs requested by February 9, 2021

RQ-0395-KP

Requestor:

The Honorable Christian D. Menefee

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002-1700

Re: Applicability of Local Government Code chapter 171 regarding conflicts of interest and Government Code chapter 573 regarding nepotism to a county attorney whose father-in-law is a partner at a law firm that contracts with the county (RQ-0395-KP)

Briefs requested by February 10, 2021

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

TRD-202100174
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: January 12, 2021

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Opinions

Opinion No. KP-0347

The Honorable Briscoe Cain

Chair, House Select Committee on Driver's License Issuance & Renewal

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Public access to the Texas Capitol and whether members of the Legislature may vote on legislation from a location other than their respective chambers (RQ-0389-KP)

S U M M A R Y

Article III, section 16 of the Texas Constitution requires that sessions of each House be open, except when the Senate is in executive session. Thus, when the Legislature meets for session in the Capitol, it must be open and accessible to the public.

The First Amendment of the U.S. Constitution prohibits laws that abridge the freedom of speech or the right of the people to petition the government for a redress of grievances. However, to the extent that the Capitol is a limited public forum, the Legislature may impose reasonable content-neutral conditions for the time, place, and manner of access.

Article III, section 10 establishes a quorum of two-thirds of each House to do business, and it ties quorum to "attendance." A court could construe this term and others in the Texas Constitution to require physical presence in the chamber in order to attend and be counted for purposes of a quorum.

Article III, section 11 of the Texas Constitution provides that each "House may determine the rules of its own proceedings." However, the House and Senate must determine procedures, consistent with the Texas and U.S. Constitutions, for providing public access, conducting public testimony, debate, and voting on legislation during the legislative session. The rules set by the House and Senate have historically conformed to constitutional restraints requiring voting and debate to occur in person.

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

TRD-202100173
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: January 12, 2021

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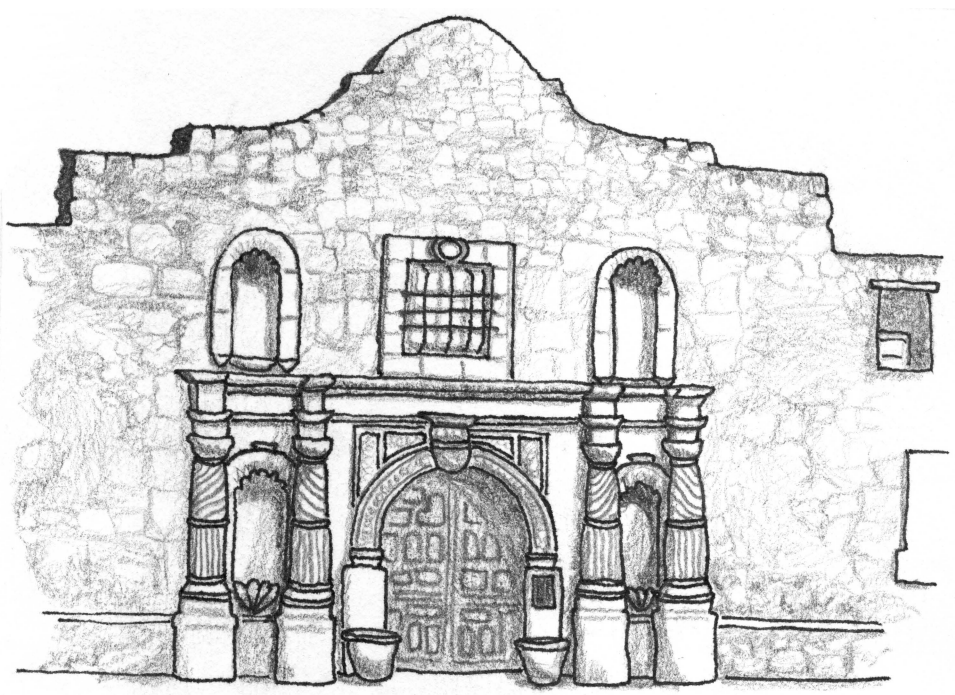

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, 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 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 295. OCCUPATIONAL HEALTH

SUBCHAPTER C. TEXAS ASBESTOS HEALTH PROTECTION

25 TAC §295.65

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts on an emergency basis an amendment to §295.65 in Title 25 Texas Administrative Code, Chapter 295, Occupational Health, Subchapter C, Texas Asbestos Health Protection, concerning an emergency rule in response to COVID-19 in order to set forth standards by which licensed training providers can provide online asbestos refresher courses as an alternative to in-person courses. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency 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 proposed emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that 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. DSHS and HHSC accordingly find that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Texas Asbestos Health Protection rule regarding online refresher courses.

To protect asbestos licensees and the public health, safety, and welfare during the COVID-19 pandemic, the Executive Commissioner of HHSC, on behalf of DSHS, adopts an emergency rule amendment to §295.65, Training: Approval of Training Courses, that sets forth requirements for DSHS to approve online refresher courses as an alternative to in-person refresher courses. Completion of an annual asbestos refresher course is required to renew an asbestos license and engage in asbestos detection and abatement, which is an essential service in Texas. The rule requires approval by DSHS of online refresher training courses; requires that online refresher courses have systems in place to authenticate student identity, protect sensitive user information, provide an interactive component, monitor time spent online, provide technical support, provide a distinct certificate, and allow course audits by DSHS; requires submission of an application for approval; and requires additional recordkeeping.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Occupations Code §1954.051 and §1954.053. 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 DSHS and for the administration of Texas Health and Safety Code, Chapter 1001. Texas Occupations Code §1954.051 authorizes the Executive Commissioner of HHSC to adopt rules governing general rulemaking authority. Texas Occupations Code §1954.053 authorizes the Executive Commissioner of HHSC to adopt rules governing performance standards and work practices.

The amendment implements Texas Government Code §531.0055 and Texas Occupations Code §1954.051 and §1954.053.

§295.65. Training: Approval of Training Courses.

(a) - (h) (No change.)

(i) COVID-19 emergency rule for online asbestos refresher training. An online asbestos refresher training course presented to a student by a licensed training provider may be conducted if the course meets the requirements of this subsection.

(1) Scope.

(A) For purposes of this subsection:

(i) an asynchronous online course means a course type that can be taken at any time;

(ii) a synchronous online course means a course type that is taken live;

(iii) an initial asbestos training course that is conducted online is prohibited; and

(iv) an online course under this section will only be approved if it is a synchronous online course; an asynchronous online course will not be approved.

(B) A training provider must not provide, offer, or claim to provide an online refresher course without applying for and receiving approval from the department as required under this subsection.

(C) An application for an online course must be submitted separately from an application for approval for an in-person refresher course.

(D) A licensed training provider may apply for approval to conduct an online asbestos refresher course that the training provider is approved to teach in-person.

(2) Online refresher course requirements. A training provider that offers an online course must have a system in place that:

(A) authenticates the identity of the student taking the training and their eligibility to enroll in the course to deter fraud and falsification of student identity;

(B) uses encryption technology to protect sensitive user information;

(C) ensures that the student is focusing on the training material throughout the entire training period, such as a strong interactive component to ensure continued student focus through discussion between the student and approved instructor or approved guest speaker, or interactive video clips, or both;

(D) monitors and records a student's actual time spent online, including applicable breaks;

(E) allows the student to ask questions of an approved instructor or approved guest speaker and allows the instructor or guest speaker to provide a response to the student's question during the course;

(F) provides technical support to the student during the course to address any technical issue as soon as possible but no later than the end of the course day, and if a student is inadvertently logged out of an online session due to a technical issue, the student must be given credit for the portion of the course completed and be required to make-up the portion of the course missed;

(G) reduces the opportunity for document fraud by providing a distinct course certificate that contains all the requirements of subsection (f) of this section and specifies that the course is online and specifies the course type; and

(H) provides the department unrestricted access to an online course for auditing purposes at no charge at any time the course is being given.

(3) Approval requirements.

(A) A licensed training provider must submit an application for approval of an online course to the department that includes, in addition to the requirements of subsection (d)(2) of this section and §295.64(i) of this title (relating to Training: Required Asbestos Training Courses), the following:

(i) that the application is for an online asbestos refresher course;

(ii) the type and discipline of the course;

(iii) documentation of the systems in place required by paragraph (2) of this subsection;

(iv) a technical support plan that describes potential technical issues that may occur and how the issues will be immediately handled; and

(v) a description of the method used to verify student's attendance as required in paragraph (4)(B) of this subsection.

(B) Upon receipt of a complete application and the required application fee, the department will issue the training provider contingent course approval. The department will conduct an audit of the online course. If the department finds that the course:

(i) meets the requirements of this chapter, the department will remove the contingent course approval status within 45 days of the course audit; or

(ii) does not meet the requirements of this chapter, the department will issue a deficiency notice within 45 days of the course audit.

(I) If the training provider does not submit the corrections identified in the deficiency notice, if applicable, and request a second audit by the deadline provided in the deficiency notice, the department will issue a notice of withdrawal of contingent approval of the training course.

(II) A training provider may request two audits to remove the contingent course status.

(III) If the training provider fails to meet the requirements of this chapter after the third audit, the department will issue a notice of withdrawal of contingent approval of the training course and the training provider must reapply for approval of the course.

(C) If approved by the department to conduct online training, the training provider must clearly identify that the course is approved by the department when advertising or registering a student for the course.

(4) Additional notification, course, and roster requirements.

(A) The course type must be submitted with the course notification.

(B) Training instructors must:

(i) view each student during the course to ensure student focus;

(ii) validate student identity during registration and after each break and lunch period; and

(iii) have at least one support staff member assist the instructor to monitor online students during an in-person course that is also being presented online.

(C) The group photograph may include multiple frames or photographs, if a single group photograph is not feasible, to meet the requirements of subsection (f)(3) of this section.

(5) Recordkeeping requirements. A licensed training provider that is approved to administer an online course is subject to the following additional recordkeeping requirements.

(A) Student identity authentication and verification data.

(B) Student online time tracking data.

(C) Training instructor, guest speaker, and technical support contact data.

(6) Disciplinary action.

(A) For purposes of license or registration renewal, the department will not accept certificates from an online course that was not approved by the department.

(B) Failure to obtain approval before conducting an online course and failure to meet the requirements of this subsection may result in disciplinary action against the licensed training provider.

(C) The department will withdraw course approval if the training provider fails to meet the requirements of this subsection.

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 January 8, 2021.

TRD-202100113
Barbara Klein and Karen Ray
General Counsel and Chief Counsel
Department of State Health Services
Effective date: January 9, 2021
Expiration date: May 8, 2021
For further information, please call: (512) 834-6608

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 339. EMERGENCY RULE RELATED TO A STATE FACILITY, LOCAL INTELLECTUAL AND DEVELOPMENTAL DISABILITY AUTHORITY, LOCAL MENTAL HEALTH AUTHORITY, AND LOCAL BEHAVIORAL HEALTH AUTHORITY

SUBCHAPTER A. COVID-19 EMERGENCY RULE

26 TAC §339.101

The Health and Human Services Commission is renewing the effectiveness of emergency new §339.101 for a 60-day period. The text of the emergency rule was originally published in the October 2, 2020, issue of the *Texas Register* (45 TexReg 6832).

Filed with the Office of the Secretary of State on January 13, 2021.

TRD-202100183
Nycia Deal
Attorney
Health and Human Services Commission
Original effective date: September 17, 2020
Expiration date: March 15, 2021
For further information, please call: (512) 438-3135

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CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

SUBCHAPTER K. COVID-19 RESPONSE

26 TAC §553.2004

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 553, Licensing Standards for Assisted Living Facilities, new §553.2004, concerning an emergency rule to track vaccinations of staff and residents in long-term care facilities in Texas in response to COVID-19. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing if it finds 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 emergency rule for Assisted Living Facility COVID-19 Vaccination Data Reporting.

To protect assisted living facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require assisted living facilities to accurately report COVID-19 vaccination data for staff and residents to HHSC in the format established by HHSC within 24 hours of completing a round of vaccinations. This rule is necessary to accurately track vaccinations of staff and residents in long-term care facilities in Texas.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055, and Texas Health and Safety Code §247.025 and §247.026. 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 §247.026 requires the Executive Commissioner of HHSC to adopt rules prescribing minimum standards to protect the health and safety of assisted living residents. Texas Health and Safety Code §247.025 requires the Executive Commissioner of HHSC to adopt rules necessary to implement Texas Health and Safety Code Chapter 247 concerning assisted living facilities.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 247.

§553.2004. Assisted Living Facility COVID-19 Vaccination Data Reporting.

(a) Based on state law and federal guidance, the Texas Health and Human Services Commission (HHSC) finds COVID-19 to be a health and safety risk and requires an assisted living facility to take the following measures.

(b) Within 24 hours of completing a round of vaccinations, an assisted living facility must accurately report COVID-19 vaccina-

tion data for staff and residents to HHSC in the format established by HHSC.

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 January 11, 2021.

TRD-202100133
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: January 11, 2021
Expiration date: May 10, 2021
For further information, please call: (512) 438-3161

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER CC. COVID-19 EMERGENCY RULE

40 TAC §19.2804

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis new §19.2804 in Title 40, Texas Administrative Code, Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, Subchapter CC, COVID-19 Emergency Rule. HHSC is adopting this emergency rule to track vaccinations of staff and residents in long-term care facilities in Texas in response to COVID-19. As authorized by Government Code, §2001.034, HHSC may adopt an emergency rule without prior notice or hearing if it finds that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under 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 proposed 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. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule for Nursing Facility COVID-19 Vaccination Data Reporting.

To protect nursing facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, the Executive Commissioner of HHSC adopts an emergency rule to require nursing facilities to accurately report COVID-19 vaccination data for staff and residents to HHSC in the format established by HHSC within 24 hours of completing a round of vaccinations. The rule is necessary to accurately track vaccinations of staff and residents in long-term care facilities in Texas.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055, and Texas Health and Safety Code §242.001 and §242.037. Texas Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an immenent 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 health and human services system. Texas Health and Safety Code §242.001 states the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility. Texas Health and Safety Code §242.037 requires the Executive Commissioner of HHSC to make and enforce rules prescribing minimum standards quality of care and quality of life for nursing facility residents.

The new rule implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 242.

§19.2804. Nursing Facility COVID-19 Vaccination Data Reporting.

(a) Based on state law and federal guidance, the Texas Health and Human Services Commission (HHSC) finds COVID-19 to be a health and safety risk and requires a nursing facility to take the following measures.

(b) Within 24 hours of completing a round of vaccinations, a nursing facility must accurately report COVID-19 vaccination data for staff and residents to HHSC in the format established by HHSC.

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 January 11, 2021.

TRD-202100132
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: January 11, 2021
Expiration date: May 10, 2021
For further information, please call: (512) 438-3161

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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 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

SUBCHAPTER D. CRIMINAL HISTORY AND LICENSE ELIGIBILITY

16 TAC §60.42

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter D, §60.42, regarding the Procedural Rules of the Commission and the Department. These proposed changes are referred to as the "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC, Chapter 60, implement Texas Occupations Code, Chapter 51, General Provisions Related to Licensing, and Chapter 53, Subchapter D, Preliminary Evaluation of License Eligibility.

The proposed rule reduces the current fee amount in administrative rules charged for the Criminal History Evaluation Letter (CHEL) from $25 to $10. This letter is issued by the Department, upon request, to determine a license applicant's eligibility for a specific occupational license regulated by the Department, after conducting a criminal background check. The proposed rule is necessary to reflect the Department's adherence to Sections 51.202 and 53.105, Texas Occupations Code to reduce the CHEL fee to an amount reasonable and necessary to cover the costs of administering programs, after consideration and analysis by Department staff.

SECTION-BY-SECTION SUMMARY

The proposed rule amends 16 TAC, §60.42, Criminal History Evaluation Letter, by reducing the fee noted in subsection (c)(2) from $25 to $10.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there will be no estimated increase or loss in revenue to local government as a result of enforcing or administering the proposed rule.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there will be a loss of revenue to state government in reducing the request fee for a criminal history evaluation letter from $25 to $10. Over the past five years, TDLR has averaged 465 criminal history evaluation letter requests per year. Those numbers do not include two programs recently transferred to TDLR for which the agency was not licensing during those five years. Including potential requestors who might seek licenses in those programs, and accounting for a gradual increase in requests over the five years, it is estimated that TDLR could receive approximately 500 criminal history evaluation letter requests per year over the next five years. A $15 reduction in the fee for each request would result in a loss of $7,500 in revenue each year for the next five years.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be a reduction in costs to persons who are required to comply with the proposed rule. A person who might not have sufficient available financial resources to request a criminal history evaluation letter at the current fee amount will now have greater opportunity to obtain the letter at the reduced $10 fee level. The reduction in fee serves to remove a possible barrier to application for licensure into the regulated occupation.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

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

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

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

rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rule does not create or eliminate a government program.

2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rule does require an increase or decrease in fees paid to the agency. The proposed rule would reduce the request fee for a criminal history evaluation letter from $25 to $10.

5. The proposed rule does not create a new regulation.

6. The proposed rule does not expand, limit, or repeal an existing regulation.

7. The proposed rule does not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rule does not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

Comments on the proposed rule may be submitted electronically on the Department's website at *https://ga.tdlr.texas.gov:1443/form/gcerules;* by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 53, 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 proposed rule are those set forth in Texas Occupations Code, Chapters 51 and 53. No other statutes, articles, or codes are affected by the proposed rule.

§60.42. Criminal History Evaluation Letters.

(a) Pursuant to Texas Occupations Code Chapter 51, §51.4012 and Chapter 53, Subchapter D, a person may request the department issue a criminal history evaluation letter regarding the person's eligibility for a specific occupational license regulated by the department.

(b) A person may request the department issue an evaluation letter regarding whether the person may be eligible for a license if the person has a conviction or deferred adjudication for a felony or misdemeanor offense, or if there is other information that indicates that the person may lack the honesty, trustworthiness or integrity to hold a license issued by the department.

(c) To request an evaluation letter, the person must:

(1) submit the request using a department-approved form; and

(2) pay the required fee of $10 [~~$25~~].

(d) A person must submit a separate evaluation letter request and fee for each specific occupational license in which the department will evaluate the person's eligibility.

(e) An evaluation request is not considered to be a complete request until all required information is received. No evaluation letter will be issued for an incomplete request. The entire process from receipt of the completed request to the issuance of an evaluation letter will not exceed 90 days.

(f) The department will issue an evaluation letter in response to each criminal history evaluation letter request. The evaluation letter will state the department's determination on each ground of potential ineligibility.

(g) The department is not bound by its determination if:

(1) the requestor fails to disclose known information that is relevant to the evaluation; or

(2) there is a change in the person's circumstances after the evaluation letter is issued.

(h) The department's determination is not a contested case under Government Code, Chapter 2001, and the determination may not be appealed. The department's determination does not prohibit or prevent a person from enrolling or attending an educational program, taking a licensing examination, or applying for a license.

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

Filed with the Office of the Secretary of State on January 8, 2021.

TRD-202100119
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: February 21, 2021
For further information, please call: (512) 475-4879

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 131. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Title 25, Part 1, Chapter 131, concerning Freestanding Emergency Medical Care Facilities. The repealed chapter is comprised of §§131.1, 131.2, 131.21 - 131.31, 131.41 - 131.68, 131.81, 131.82, 131.101 - 131.109, 131.121 - 131.123, and 131.141 - 131.148.

BACKGROUND AND PURPOSE

The purpose of this proposal is to repeal the rules in Chapter 131, Freestanding Emergency Medical Care Facilities, and propose new rules in Title 26, Part 1, Chapter 509, Freestanding Emergency Medical Care Facilities. The rules for Title 26, Chapter 509 are proposed elsewhere in this issue of the *Texas Register* and are substantially similar to the rules proposed for repeal. The new rules will comply with current statute, update guidelines for inspections and investigations, correct outdated citations, and update language throughout to reflect the transition to the new title.

SECTION-BY-SECTION SUMMARY

The proposed repeal of Title 25, Chapter 131 allows similar rules to be proposed as new rules in Title 26, Chapter 509.

FISCAL NOTE

Trey Wood, HHSC 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 affect fees paid to HHSC;

(5) the proposed rules will create new rules;

(6) the proposed rules will repeal existing rules;

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

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

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

Trey Wood has also determined that there may be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the proposal, as they will not be required to alter their current business practices. In addition, the proposal does not impose any additional costs on those required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the repeals are in effect, the public benefit will be clearer and more accurate information regarding Freestanding Emergency Medical Care Facilities.

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 repeals, as they will not be required to alter their 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 to the proposal may be submitted to the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HCR_PRT@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 the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R009" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §131.1, §131.2

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 to implement the Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§131.1. Purpose.

§131.2. Definitions.

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

Filed with the Office of the Secretary of State on January 6, 2021.

TRD-202100088
Barbara L. Klein
General Counsel
Department of State Health Services
Earliest possible date of adoption: February 21, 2021
For further information, please call: (512) 834-4591

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SUBCHAPTER B. LICENSING REQUIREMENTS

25 TAC §§131.21 - 131.31

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 to implement the Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§131.21. General.
§131.22. Classifications of Facilities.
§131.23. Exemptions from Licensure.
§131.24. Unlicensed Facilities.
§131.25. Application and Issuance of Initial License.
§131.26. Application and Issuance of Renewal License.
§131.27. Inactive Status and Closure.
§131.28. Change of Ownership.
§131.29. Conditions of Licensure.
§131.30. Time Periods for Processing and Issuing Licenses.
§131.31. Fees.

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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Barbara L. Klein
General Counsel
Department of State Health Services
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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §§131.41 - 131.68

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 to implement the Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§131.41. Operational Standards.
§131.42. Administration.
§131.43. Medical Director.
§131.44. Medical Staff.
§131.45. Facility Staffing and Training.
§131.46. Emergency Services.
§131.47. Anesthesia.
§131.48. Laboratory and Pathology Services.
§131.49. Pharmaceutical Services.
§131.50. Radiology.
§131.51. Respiratory Services.
§131.52. Surgical Services within the Scope of the Practice of Emergency Medicine.
§131.53. Medical Records.
§131.54 Infection Control.
§131.55. Sanitary Conditions and Hygienic Practices.
§131.56. Sterilization.
§131.57. Linen and Laundry Services.
§131.58. Waste and Waste Disposal.
§131.59. Patient Rights.
§131.60. Abuse and Neglect.
§131.61. Reporting Requirements.
§131.62. Complaints.
§131.63. Patient Safety Program.
§131.64. Quality Assessment and Performance Improvement.
§131.65. Disaster Preparedness/Emergency and Contingency Planning.
§131.66. Patient Transfer Policy.
§131.67 Patient Transfer Agreements.
§131.68. Miscellaneous Policies and Protocol.

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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Barbara L. Klein
General Counsel
Department of State Health Services
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SUBCHAPTER D. INSPECTION AND INVESTIGATION PROCEDURES

25 TAC §131.81, §131.82

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 to implement the Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§131.81. Inspection and Investigation Procedures.

§131.82. Complaint Against a Department Surveyor.

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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Barbara L. Klein
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Department of State Health Services
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For further information, please call: (512) 834-4591

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SUBCHAPTER E. ENFORCEMENT

25 TAC §§131.101 - 131.109

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 to implement the Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§131.101. Enforcement Actions.

§131.102. Denial of a License.

§131.103. Suspension; Revocation.

§131.104. Emergency Suspension.

§131.105. Probation.

§131.106. Injunction.

§131.107. Criminal Penalty.

§131.108. Administrative Penalty.

§131.109. Payment and Collection of Administrative Penalty; Judicial Review.

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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Barbara L. Klein
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Department of State Health Services
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SUBCHAPTER F. FIRE PREVENTION AND SAFETY REQUIREMENTS

25 TAC §§131.121 - 131.123

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 to implement the Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§131.121. Fire Prevention, Protection, and Emergency Contingency Plan.

§131.122. General Safety.

§131.123. Handling and Storage of Gases, Anesthetics, and Flammable Liquids.

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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Barbara L. Klein
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Department of State Health Services
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SUBCHAPTER G. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS

25 TAC §§131.141 - 131.148

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 to implement the Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§131.141. Construction Requirements for a Pre-Existing Facility.

§131.142. Construction Requirements for an Existing Facility for Construction Completed after September 1, 2010.

§131.143. Construction Requirements for a New Facility.

§131.144. Elevators, Escalators, and Conveyors.

§131.145. Mobile, Transportable, and Relocatable Units.

§131.146. Preparation, Submittal, Review and Approval of Plans, and Retention of Records.

§131.147. Construction, Inspection, and Approval of Project.

§131.148. Tables.

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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Barbara L. Klein
General Counsel
Department of State Health Services
Earliest possible date of adoption: February 21, 2021
For further information, please call: (512) 834-4591

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 509. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new rules in Title 26, Part 1, Chapter 509, concerning Freestanding Emergency Medical Care Facilities. The new chapter is comprised of §§509.1, 509.2, 509.21 - 509.30, 509.41 - 509.67, 509.81 - 509.85, and 509.101 - 509.109.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with House Bill (H.B.) 2041 and H.B. 1112, 86th Legislature, Regular Session, 2019, which amend Texas Health and Safety Code, Chapter 254, relating to the regulation of Freestanding Emergency Medical Care Facilities (FEMCs). H.B. 2041 requires FEMCs to comply with updated advertising requirements, which includes disclosure of facility fees and clarification of health benefit plans that are accepted by the facility, and it requires a disclosure statement be provided to patients. H.B. 2041 requires the removal of signs from a facility that closes or whose license is expired, suspended, or revoked. H.B. 1112 similarly requires removal of signage for closed facilities or facilities whose license is expired, suspended, or revoked. This proposal also complies with Senate Bill (S.B.) 425, 84th Legislature, Regular Session, 2015, which amended the Texas Health and Safety Code, Chapter 241 to require a freestanding emergency medical care facility to post a notice regarding facility fees and provide other consumer information to patients.

To implement this change, rules in Title 25, Chapter 131, Freestanding Emergency Medical Care Facilities, are being repealed and new rules proposed in Title 26, Chapter 509, Freestanding Emergency Medical Care Facilities. The repeal of Title 25, Chapter 131 is proposed elsewhere in this issue of the *Texas Register.* The proposal will also clean up the Investigations and Inspections Procedures and Enforcement sections to outline facility documentation expectations, update language to reflect the transition to HHSC and the shift to Title 26, and correct outdated references and citations.

SECTION-BY-SECTION SUMMARY

Proposed new Subchapter A, General Provisions, comprised of §509.1 and §509.2, provides the purpose of the chapter and definitions used in the chapter. This new subchapter is similar to the previous Title 25, Chapter 131, Subchapter A, but edits have been made to correct outdated titles and contact information.

Proposed new Subchapter B, Licensing Requirements, comprised of §§509.21 - 509.30, provides guidelines on application for initial and renewal licensure, facility closures, facility types, changes of ownership, and fees. Section 509.26, Inactive Status and Closure, updates the previous rule text in Title 25, Chapter 131, §131.27 to clarify the inactive status and closure guidelines for a facility that does not provide services under its license for more than five calendar days. This section implements H.B. 1112 and H.B. 2041 to require a facility that closes or for which a license is expired, suspended, or revoked to remove signs indicating that the facility is in operation from within view of the general public. Section 509.30, Fees, increases the licensure period for both initial licensure and renewals from one year to two years, and doubles the corresponding fees compared to the repealed rule at §131.31. This new subchapter is similar to the previous Title 25, Chapter 131 Subchapter B, but additional edits have been made to correct inaccurate citations and remove outdated information.

Proposed new Subchapter C, Operational Requirements, comprised of §§509.41 - 509.67, describes a variety of information on the guidelines for proper facility operational standards, including administration, staffing, training, services provided, medical records, infection control, patient rights, and quality assurance. This new subchapter is similar to the previous Title 25, Chapter 131, Subchapter C, but additional edits have been made to remove outdated information on programs and requirements that no longer exist. Proposed new §509.41, Operational Standards, implements H.B. 1112 and H.B. 2041 to outline advertising and marketing requirements relating to insurers and health benefit plans. These amendments also clarify the regulatory consequences of violating these requirements by making false, misleading, or deceptive claims. Proposed new §509.60, Patient Rights, further clarifies and simplifies marketing and advertising guidelines and implements H.B. 2041 by requiring facilities to post a notice of fees and provide a written disclosure statement that details the facility's fees and accepted health benefit plans to a patient or their legally authorized representative. Section 509.60 also implements S.B. 425 by requiring facilities to comply with HSC Chapter 324, Subchapter C.

Proposed new Subchapter D, Inspection and Investigation Procedures, comprised of §§509.81 - 509.85, makes comprehensive updates to HHSC's inspection and investigation procedures for FEMCs to clarify provider expectations and create greater consistency between this ruleset and those for other facility types.

Proposed new Subchapter E, Enforcement, comprised of §§509.101 - 509.109, provides necessary requirements for enforcement actions, including denial of licensure, suspension, revocation, probation, and administrative penalties. This new

subchapter is similar to the previous Title 25, Chapter 131, Subchapter B, but additional minor edits have been made to correct outdated titles, citations, and contact information.

FISCAL NOTE

Trey Wood, HHSC 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.

For the first the first five years that the rules will be in effect, enforcing or administering the rules does have foreseeable implications relating to costs or revenues of state government. New applicants for FEMCs will pay the initial license fee of $7,410 per year for two years rather than for one year as in the current rule. The proposal, therefore, causes the licensees to pay the initial license fee for an additional year, rather than paying the renewal fee of $3,035 in the second year. This second-year payment at the higher fee results in additional fee income to the agency of $4,375 ($7,410 - $3,035) for each new applicant in the second year of an initial applicant's license.

HHSC lacks data to estimate how many new applicants there will be for new FEMC licenses in any year. HHSC also lacks information to provide an estimate of the probable new revenue from this proposal.

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 affect fees paid to HHSC;

(5) the proposed rules will create new rules;

(6) the proposed rules will repeal existing rules;

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

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

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

Trey Wood has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities as the rule is proposed.

The proposed rules require the approximately 199 Freestanding Emergency Medical Care Facilities (FEMCs) licensed statewide to comply with the new advertising, signage, and fee disclosure requirements outlined in Texas Health and Safety Code, Chapter 254. In addition, FEMCs will be required to comply with updated investigations and enforcement procedures. Some FEMCs may experience an adverse economic impact the first time they must pay a two-year rather than a one-year license renewal fee at one time. HHSC lacks sufficient data to estimate the number of FEMCs designated as small businesses, micro-businesses, or rural communities that will be impacted by the proposed rules.

HHSC has also determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with the health, safety, and environmental and economic welfare of the state in providing adequate oversight to FEMCs or compliance with the Texas Occupations Code.

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.

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be increased transparency regarding facility fees and health benefit plans, more stringent advertising guidelines, and reduced confusion regarding whether a facility is open to the public. In addition, the public will benefit from more accurate and up-to-date rule language, greater clarity regarding facility expectations during inspections and investigations, and consistency with existing statutes.

Trey Wood has determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because the proposed rules require FEMCs to develop, implement, and enforce policies and procedures that ensure accurate and transparent advertising, fee disclosures, and signage specified under Texas Health and Safety Code, Chapter 254. Facilities will also be required to comply with new requirements regarding facility fees, inspections, and investigations. HHSC assumes those facilities may incur costs for required documentation, staff training, and new advertising. HHSC lacks sufficient information to estimate those costs. For these reasons, the costs to persons required to comply cannot be determined at this time.

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 the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HCR_PRT@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R009" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §509.1, §509.2

STATUTORY AUTHORITY

The new rules 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 §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The new rules implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§509.1. Purpose.

(a) The purpose of this chapter is to implement Texas Health and Safety Code Chapter 254, which requires freestanding emergency medical care facilities to be licensed by the Texas Health and Human Services Commission.

(b) This chapter provides procedures for obtaining a freestanding emergency medical care facility license; minimum standards for freestanding emergency medical care facility functions and services; patient rights standards; discrimination or retaliation standards; patient transfer and other policy and protocol requirements; reporting, posting, and training requirements relating to abuse and neglect; standards for voluntary agreements; inspection and investigation procedures; enforcement standards; fire prevention and protection requirements; general safety standards; physical plant and construction requirements; and standards for the preparation, submittal, review, and approval of construction documents.

(c) Compliance with this chapter does not constitute release from the requirements of other applicable federal, state, or local laws, codes, rules, regulations, and ordinances. This chapter must be followed where it exceeds other codes and ordinances.

§509.2. Definitions.

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

(1) Act--Texas Health and Safety Code, Chapter 254, titled Freestanding Emergency Medical Care Facilities.

(2) Action plan--A written document that includes specific measures to correct identified problems or areas of concern; identifies strategies for implementing system improvements; and includes outcome measures to indicate the effectiveness of system improvements in reducing, controlling, or eliminating identified problem areas.

(3) Administrator--A person who is a physician, is a registered nurse, has a baccalaureate or postgraduate degree in administration or a health-related field, or has one year of administrative experience in a health-care setting.

(4) Advanced practice registered nurse (APRN)--A registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse in Texas. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner."

(5) Adverse event--An event that results in unintended harm to the patient by an act of commission or omission rather than by the underlying disease or condition of the patient.

(6) Applicant--A person who seeks a freestanding emergency medical care facility license from HHSC and who is legally responsible for the operation of the freestanding emergency medical care facility, whether by lease or ownership.

(7) Certified registered nurse anesthetist (CRNA)--A registered nurse who has current certification from the Council on Certification of Nurse Anesthetists and who is currently authorized to practice as an advanced practice registered nurse by the Texas Board of Nursing.

(8) Change of ownership--Change in the person legally responsible for the operation of the facility, whether by lease or by ownership.

(9) Designated provider--A provider of health care services, selected by a health maintenance organization, a self-insured business corporation, a beneficial society, the Veterans Administration, TRICARE, a business corporation, an employee organization, a county, a public hospital, a hospital district, or any other entity to provide health care services to a patient with whom the entity has a contractual, statutory, or regulatory relationship that creates an obligation for the entity to provide the services to the patient.

(10) Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (containerized or uncontainerized) into or on any land or water so that solid waste or hazardous waste, or any constituent thereof, may enter the environment or be emitted into the air or discharge into any waters, including groundwaters.

(11) Emergency care--Health care services provided in a freestanding emergency medical care facility to evaluate and stabilize medical conditions of a recent onset and severity, including severe pain, that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that the person's condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in:

(A) placing the person's health in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of a bodily organ or part;

(D) serious disfigurement; or

(E) in the case of a pregnant woman, serious jeopardy to the health of the woman or fetus.

(12) Facility--A freestanding emergency medical care facility.

(13) Freestanding emergency medical care facility--A facility that is structurally separate and distinct from a hospital and which receives an individual and provides emergency care as defined in paragraph (11) of this section.

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

(15) Governing body--The governing authority of a freestanding emergency medical care facility that is responsible for a facility's organization, management, control, and operation, including appointment of the medical staff; and includes the owner or partners for a freestanding emergency medical care facility owned or operated by an individual or partners or corporation.

(16) Freestanding emergency medical care facility administration--The administrative body of a freestanding emergency medical care facility headed by an individual who has the authority to represent the facility and who is responsible for the operation of the facility according to the policies and procedures of the facility's governing body.

(17) Licensed vocational nurse (LVN)--A person who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(18) Licensee--The person or governmental unit named in the application for issuance of a facility license.

(19) Medical director--A physician who is board certified or board eligible in emergency medicine, or board certified in primary care with a minimum of two years of emergency care experience.

(20) Medical staff--A physician or group of physicians, a podiatrist or group of podiatrists, and a dentist or group of dentists who by action of the governing body of a facility are privileged to work in and use the facility.

(21) Owner--One of the following persons or governmental unit that will hold, or does hold, a license issued under the Act in the person's name or the person's assumed name:

(A) a corporation;

(B) a governmental unit;

(C) a limited liability company;

(D) an individual;

(E) a partnership, if a partnership name is stated in a written partnership agreement, or an assumed name certificate;

(F) all partners in a partnership if a partnership name is not stated in a written partnership agreement, or an assumed name certificate; or

(G) all co-owners under any other business arrangement.

(22) Patient--An individual who presents for diagnosis or treatment.

(23) Person--An individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative of those entities.

(24) Physician--An individual licensed by the Texas Medical Board and authorized to practice medicine in the State of Texas.

(25) Physician assistant--An individual licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.

(26) Practitioner--A health care professional licensed in the State of Texas, other than a physician, podiatrist, or dentist. A practitioner shall practice in a manner consistent with their underlying practice act.

(27) Premises--A building where patients receive emergency services from a freestanding emergency medical care facility.

(28) Presurvey conference--A conference held between HHSC staff and the applicant or the applicant's representative to review licensure rules and survey documents and provide consultation before the on-site licensure inspection.

(29) Quality assessment and performance improvement (QAPI)--An ongoing program that measures, analyzes, and tracks quality indicators related to improving health outcomes and patient care emphasizing a multidisciplinary approach. The program implements improvement plans and evaluates the implementation until resolution is achieved.

(30) Registered nurse (RN)--An individual who is currently licensed by the Texas Board of Nursing as a registered nurse.

(31) Sexual assault forensic examiner--A certified sexual assault nurse examiner, or a physician with specialized training on conducting a forensic medical examination.

(32) Survivor of sexual assault--An individual who is a victim of a sexual assault, regardless of whether a report is made, or a conviction is obtained in the incident.

(33) Stabilize--To provide necessary medical treatment of an emergency medical condition to ensure, within reasonable medical probability, that the condition is not likely to deteriorate materially from or during the transfer of the individual from a facility.

(34) Transfer--The movement (including the discharge) of an individual outside a facility at the direction of and after personal examination and evaluation by the facility physician. Transfer does not include the movement outside a facility of an individual who has been declared dead or who leaves the facility against the advice of a physician.

(35) Transfer agreement--A referral, transmission, or admission agreement with a hospital.

(36) Universal precautions--Procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments, as those procedures are defined by the Centers for Disease Control and Prevention (CDC) of the United States Department of Health and Human Services. This term includes standard precautions as defined by CDC, which are designed to reduce the risk of transmission of bloodborne and other pathogens in healthcare facilities.

(37) Violation--Failure to comply with the Act, another statute, a rule or standard, or an order issued by the executive commissioner of HHSC or the executive commissioner's designee, adopted or enforced under the Act.

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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Health and Human Services Commission
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SUBCHAPTER B. LICENSING REQUIREMENTS

26 TAC §§509.21 - 509.30

STATUTORY AUTHORITY

The new rules 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 §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The new rules implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§509.21. General.

(a) License required.

(1) Except as provided in §509.22 of this subchapter (related to Exemptions from Licensure), a person may not establish or operate a freestanding emergency medical care facility in this state without a license issued by HHSC.

(2) A facility or person shall not hold itself out to the public as a freestanding emergency medical care facility or advertise, market, or otherwise promote the services using the terms "emergency," "ER," or any similar term that would give the impression that the facility or person is providing emergency care.

(3) The license application shall be submitted in accordance with §509.24 of this subchapter (relating to Application and Issuance of Initial License). The applicant shall retain copies of all application documents submitted to HHSC.

(b) A facility shall comply with the provisions of Texas Health and Safety Code Chapter 254, Freestanding Emergency Medical Care Facilities, and this chapter during the licensing period.

(c) Scope of facility license.

(1) Each separate facility location shall have a separate license.

(2) A facility license is issued for the premises and person or governmental unit named in the application.

(3) A facility shall not have more than one health facility license for the same physical address. The premises of a facility license shall be separated from any other occupancy or licensed health facility by a minimum of a one-hour fire rated wall.

(4) A facility license authorizes only emergency care services and those procedures that are related to providing emergency care.

(d) A facility shall prominently and conspicuously display the facility license in a public area of the licensed premises that is readily visible to patients, employees, and visitors.

(e) A facility license shall not be altered.

(f) A facility license shall not be transferred or assigned. The facility shall comply with the provisions of §509.27 of this subchapter (relating to Change of Ownership) in the event of a change in the ownership of a facility.

(g) Changes that affect the license.

(1) A facility shall notify HHSC in writing before the occurrence of any of the following:

(A) any construction, renovation, or modification of the facility buildings as described in Chapter 520 of this title (relating to Guidelines for Design, Construction, and Fire Safety in Health Care Facilities); or

(B) facility operations cease.

(2) A facility shall notify HHSC in writing not later than the 10th calendar day after the effective date of the change of any of the following:

(A) change in certification or accreditation status; and

(B) change in facility name, mailing address, telephone number, or administrator.

(3) A facility that becomes inactive or closes shall meet the requirements set forth in §509.26 of this subchapter (relating to Inactive Status and Closure).

§509.22. Exemptions from Licensure.

The following facilities are not required to be licensed under this chapter:

(1) an office or clinic owned and operated by a manufacturing facility solely for the purposes of treating its employees and contractors;

(2) a temporary emergency clinic in a disaster area;

(3) an office or clinic of a licensed physician, dentist, optometrist, or podiatrist;

(4) a licensed nursing home;

(5) a licensed hospital;

(6) a hospital that is owned and operated by this state;

(7) a facility located within or connected to a licensed hospital or a hospital that is owned and operated by this state;

(8) a facility that is owned or operated by a licensed hospital or a hospital that is owned and operated by this state and is:

(A) inspected as a service of the hospital by an organization that has been granted deeming authority as a national accreditation program for hospitals by the Centers for Medicare and Medicaid Services (CMS); or

(B) granted provider-based status by CMS; or

(9) a licensed ambulatory surgical center.

§509.23. Unlicensed Facilities.

(a) If HHSC has reason to believe that a person or facility may be providing emergency medical care services as defined in this chapter without a license, HHSC shall so notify the person or facility in writing by certified mail, return receipt requested. Not later than 20 calendar days after the date the person or facility receives the notice, the person or facility shall submit to HHSC either:

(1) an application for a license and the nonrefundable license fee;

(2) a claim for exemption under §509.22 of this subchapter (relating to Exemptions from Licensure); or

(3) documentation sufficient to establish that freestanding emergency medical care services are not being provided, including a notarized statement that freestanding emergency medical care services are not being provided and listing the types of services that are provided.

(b) If the person or facility has submitted an application for a license, the application shall be processed in accordance with §509.25 of this subchapter (relating to Application and Issuance of Initial License).

(c) If the person or facility submits a claim for exemption, HHSC shall evaluate the claim for exemption and notify the person or facility in writing of the proposed decision within 30 days following receipt of the claim for exemption.

(d) If the person or facility submits sufficient documentation under paragraph (a)(3) of this section to establish that the facility does not provide freestanding emergency medical services, HHSC shall notify the person or facility in writing that no license is required not later than 30 calendar days after HHSC receives the documentation.

(e) If HHSC determines that the documentation submitted under paragraph (a)(3) of this section is insufficient, HHSC shall notify the person or facility in writing not later than 30 calendar days after HHSC received the documentation. The person or facility shall have the opportunity to respond not later than 10 calendar days after the date the facility receives the notice. Not later than 10 calendar days after the date HHSC receives the facility's response, HHSC shall notify the person or facility in writing of HHSC's determination.

§509.24. Application and Issuance of Initial License.

(a) All first-time applications for licensing are applications for an initial license, including applications from unlicensed operational facilities and licensed facilities for which a change of ownership or relocation is anticipated.

(b) The applicant shall submit the completed application, the information required in subsection (d) of this section, and the nonrefundable license fee to HHSC 90 days before the projected opening date of the facility.

(c) The applicant shall disclose to HHSC the following, if applicable:

(1) the name, address, and social security number of the owner or sole proprietor, if the owner of the facility is a sole proprietor;

(2) the name, address, and social security number of each general partner who is an individual, if the facility is a partnership;

(3) the name, address, and social security number of any individual who has an ownership interest of more than 25 percent in the corporation, if the facility is a corporation;

(4) the name, Texas license number, and license expiration date of any physician licensed by the Texas Medical Board and who has a financial interest in the facility or in any entity that has an ownership interest in the facility;

(5) the name, Texas license number, and license expiration date of the medical chief of staff;

(6) the name, Texas license number, and license expiration date of the director of nursing;

(7) the affirmation that at least one physician licensed in the State of Texas and at least one registered nurse licensed in the State of Texas will be on site during all hours of operation;

(8) the following information concerning the applicant, the applicant's affiliates, and the applicant's managers:

(A) denial, suspension, probation, or revocation of a facility license in any state or any other enforcement action, such as court civil or criminal action in any state;

(B) surrendering a license before expiration of the license or allowing a license to expire in lieu of HHSC proceeding with enforcement action;

(C) federal or state (any state) criminal felony arrests or convictions;

(D) Medicare or Medicaid sanctions or penalties relating to the operation of a health care facility or home and community support services agency;

(E) operation of a health care facility or home and community support services agency that has been decertified or terminated from participation in any state under Medicare or Medicaid; or

(F) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid;

(9) for the two-year period preceding the application date, the following information concerning the applicant, applicant's affiliates, and applicant's:

(A) federal or state (any state) criminal misdemeanor arrests or convictions;

(B) federal, state (any state), or local tax liens;

(C) unsatisfied final judgments;

(D) eviction involving any property or space used as a health care facility in any state;

(E) injunctive orders from any court; or

(F) unresolved final federal or state (any state) Medicare or Medicaid audit exceptions;

(10) the number of emergency treatment stations;

(11) a copy of the facility's patient transfer policy and procedure for the immediate transfer to a hospital of patients requiring emergency care beyond the capabilities of the facility developed in accordance with §509.65 of this chapter (relating to Patient Transfer Policy) and signed by the chairman and the secretary of the governing body that attests the date the policy was adopted by the governing body and its effective date;

(12) a copy of the facility's memorandum of transfer form, which contains at a minimum the information described in §509.65 of this chapter;

(13) a copy of a written agreement the facility has with a hospital, which provides for the prompt transfer to and the admission by the general hospital of any patient when services are needed but are unavailable or beyond the capabilities of the facility in accordance with §509.66 of this chapter (relating to Patient Transfer Agreements); and

(14) a copy of a fire safety inspection indicating approval by the local fire authority in whose jurisdiction the hospital is based that is dated no earlier than one year prior to the opening date of the facility.

(d) The address provided on the application shall be the physical location at which the facility is or will be operating.

(e) Upon receipt of the application, HHSC shall review the application to determine whether it is complete. If HHSC determines that the application is not complete, HHSC shall notify the facility in writing.

(f) The applicant or the applicant's representative shall attend a presurvey conference at the office designated by HHSC. The designated survey office may waive the presurvey conference requirement.

(g) After the facility has participated in a presurvey conference or the presurvey conference has been waived at HHSC's discretion, the facility has received an approved architectural inspection conducted by HHSC, and HHSC has determined the facility is in compliance with subsections (c) - (e) of this section, HHSC shall issue a license to the facility to provide freestanding emergency medical care services in accordance with this chapter.

(h) The license shall be effective on the date the facility is determined to be in compliance with subsections (c) - (h) of this section.

(i) The license expires on the last day of the 24th month after issuance.

(j) If an applicant decides not to continue the application process for a license, the applicant may withdraw its application. The

applicant shall submit to HHSC a written request to withdraw. HHSC shall acknowledge receipt of the request to withdraw.

(k) During the initial licensing period, HHSC shall conduct an inspection of the facility to ascertain compliance with the provisions of the Act and this chapter.

(1) The facility shall request that an on-site inspection be conducted after the facility has provided services to a minimum of one patient.

(2) The facility shall be providing services at the time of the inspection.

§509.25. Application and Issuance of Renewal License.

(a) HHSC will send written notice of expiration of a license to an applicant no later than 60 calendar days before the expiration date. If the applicant has not received notice, it is the duty of the applicant to notify HHSC and request a renewal application.

(b) The facility shall submit the following to HHSC no later than 30 calendar days before the expiration date of the license:

(1) a completed renewal application form;

(2) a nonrefundable license fee;

(3) a copy of a fire safety inspection indicating approval by the local fire authority in whose jurisdiction the facility is based. The fire safety inspection shall be conducted annually and both inspections shall be submitted; and

(4) if the facility is accredited by the Joint Commission or other accrediting organization, documented evidence of current accreditation status.

(c) HHSC shall issue a renewal license to a facility that submits a renewal application in accordance with subsection (b) of this section and meets the minimum standards for a license set forth in this chapter.

(d) Renewal licenses shall be valid for two years from the previous expiration date.

(e) If the applicant fails to timely submit an application and fee in accordance with subsection (b) of this section, HHSC shall notify the applicant that the facility shall cease providing freestanding emergency medical care services. If the applicant can provide HHSC with sufficient evidence that the submission was completed in a timely manner and all dates were adhered to, the cease to perform shall be dismissed. If the applicant cannot provide sufficient evidence, the applicant shall immediately thereafter return the license to HHSC within 30 days of HHSC's notification.

(f) If a license expires and an applicant wishes to provide freestanding emergency medical care services after the expiration date of the license, the applicant shall reapply for a license under §509.24 of this subchapter (relating to Application and Issuance of Initial License).

§509.26. Inactive Status and Closure.

(a) A facility that does not provide services under its license for more than five calendar days shall inform HHSC, and HHSC will change the status of the facility license to inactive.

(1) To be eligible for inactive status, a facility must be in good standing with no pending enforcement action or investigation.

(2) The licensee shall be responsible for any license renewal requirements or fees, and for proper maintenance of patient records, while the license is inactive.

(3) A license may not remain inactive for more than 60 calendar days.

(4) To reactivate the license, the facility must inform HHSC no later than 60 calendar days after the facility stopped providing services under its license.

(5) A facility that does not reactivate its license by the 60th calendar day after the it stopped providing services has constructively surrendered its license, and HHSC will consider the facility closed.

(b) A facility shall notify HHSC in writing before closure of the facility.

(1) The facility shall dispose of medical records in accordance with §509.54 of this chapter (relating to Medical Records).

(2) The facility shall appropriately discharge or transfer all patients before the facility closes.

(3) A license becomes invalid when a facility closes. The facility shall return the licensure certificate to HHSC not later than 30 calendar days after the facility closes.

(c) A facility that closes, or for which a license issued under this chapter expires or is suspended or revoked, shall immediately remove or cause to be removed any signs within view of the general public indicating that the facility is in operation.

§509.27. Change of Ownership.

(a) When a facility plans to change its ownership, the new owner shall submit an application for an initial license and nonrefundable fee to HHSC no later than 30 calendar days before the date of the change of ownership. The application shall be submitted in accordance with §509.24 of this subchapter (relating to Application and Issuance of Initial License).

(b) In addition to the documents required in §509.24 of this subchapter, the applicant shall submit a copy of the signed bill of sale or lease agreement that reflects the effective date of the change of ownership.

(c) The applicant is not required to submit a transfer agreement that HHSC has previously approved if the applicant notifies HHSC in writing that it has adopted the transfer agreement.

(d) A facility is not required to submit an application for change of ownership if the facility changes only its name. If a facility changes its name, the facility must notify HHSC no later than 10 calendar days after the effective date of the change.

(e) For a change of ownership, HHSC may waive the initial licensure on-site construction and health inspections required by Chapter 520 of this title (relating to Guidelines for Design, Construction, and Fire Safety in Health Care Facilities) and Subchapter D of this chapter (relating to Inspection and Investigation Procedures).

(f) When the new owner has complied with the provisions of §509.24 of this subchapter, HHSC shall issue a license that is effective as of the date of the change of ownership.

(g) The expiration date of the license shall be in accordance with §509.24 of this subchapter.

(h) The previous owner's license becomes void as of the effective date of the new owner's license.

§509.28. Conditions of Licensure.

(a) A facility license is issued only for the premises and person or governmental unit named on the application.

(b) A facility license is issued for a single physical location and shall not include multiple buildings or offsite locations.

(c) No license may be transferred or assigned from one person or governmental unit to another person or governmental unit.

(d) No license may be transferred from one facility location to another.

(e) If a facility is relocating, the facility shall complete and submit a license application and nonrefundable fee no later than 30 calendar days before relocation of the facility. The application shall be processed in accordance with §509.24 of this subchapter (relating to Application and Issuance of Initial License). An initial license for the relocated facility shall be effective on the date the relocation occurred. The previous license shall be void on the date of relocation.

(f) A facility that changes its telephone number shall send HHSC written notice of the change no later than 30 calendar days after the number has changed.

(g) If the name of a facility is changed, the facility shall notify HHSC in writing no later than 30 calendar days after the effective date of the name change.

§509.29. Time Periods for Processing and Issuing Licenses.

(a) General.

(1) The date a license application is received is the date the application reaches HHSC.

(2) An application for an initial license is complete when HHSC has received the application fee and received, reviewed, and found acceptable the information described in §509.24 of this subchapter (relating to Application and Issuance of Initial License).

(3) An application for a renewal license is complete when HHSC has received the application fee and received, reviewed, and found acceptable the information described in §509.25 of this subchapter (relating to Application and Issuance of Renewal License).

(b) Time Periods. An application from a facility for an initial license or a renewal license shall be processed in accordance with the following time periods.

(1) The first time period begins on the date HHSC receives the complete application and ends on the date the license is issued. The first time period is 45 calendar days.

(2) If HHSC receives an incomplete application, the first time period ends on the date HHSC issues a written notice to the facility that the application is incomplete. The written notice shall describe the specific information that is required before the application is considered complete.

(3) For incomplete applications, the second time period begins on the date the last item necessary to complete the application is received and ends on the date the license is issued. The second time period is 45 calendar days.

(c) Reimbursement of fees.

(1) In the event the application is not processed in the time periods stated in subsection (b) of this section, the applicant has the right to request that HHSC reimburse in full the fee paid in that particular application process. If HHSC does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, HHSC shall deny the request.

(2) Good cause for exceeding the period established is considered to exist if:

(A) the number of applications for licenses to be processed exceeds by 15 percent or more the number processed in the same calendar quarter the preceding year;

(B) another public or private entity used in the application process caused the delay; or

(C) other conditions existed giving good cause for exceeding the established periods.

(d) If the request for reimbursement as authorized by subsection (c) of this section is denied, the applicant may then appeal to the commissioner for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting reimbursement of the fee paid because the application was not processed within the established time period. HHSC shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. HHSC shall make the final decision and provide written notification of the decision to the applicant and HHSC.

(e) If a hearing is proposed during the processing of the application, the hearing shall be conducted under Texas Government Code, Chapter 2001, Administrative Procedure Act; 25 TAC Chapter 1, Subchapter B (relating to Formal Hearing Procedures; and 1 TAC, Chapter 155 (relating to Rules of Procedure).

§509.30. Fees.

(a) The fee for an initial license (includes change of ownership or relocation) is $14,820. The license term is two years.

(b) The fee for a renewal license is $6,070. The license term is two years.

(c) An application is not complete until the applicant pays the entire application fee and submits the application form.

(d) Fees paid to HHSC are not refundable, except as indicated in §509.29 of this subchapter (relating to Time Periods for Processing and Issuing Licenses).

(e) All fees shall be paid to HHSC.

(f) HHSC collects subscription and convenience fees, in amounts determined by the TexasOnline Authority, to recover costs associated with application and renewal application processing through TexasOnline, in accordance with Texas Government Code §2054.111 and §2054.252.

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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Karen Ray
Chief Counsel
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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §§509.41 - 509.67

STATUTORY AUTHORITY

The new rules 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 §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The new rules implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§509.41. Operational Standards.

(a) The facility shall have an identified governing body fully responsible for the organization, management, control, and operation of the facility, including the appointment of the facility's medical director. The medical director shall be board certified or board eligible in emergency medicine, or board certified in primary care with a minimum of two years emergency care experience.

(b) The governing body shall adopt, implement, and enforce written policies and procedures for the total operation and all services provided by the facility.

(c) The governing body shall be responsible for all services furnished in the facility, whether furnished directly or under contract. The governing body shall ensure that services are provided in a safe and effective manner that permits the facility to comply with all applicable rules and standards.

(d) The governing body shall ensure that the medical staff has on file current written bylaws, rules, and regulations that are adopted, implemented, and enforced.

(e) The governing body shall disclose all owners of the facility to HHSC.

(f) The governing body shall meet at least annually and keep minutes or other records necessary for the orderly conduct of the facility. Each meeting held by the facility governing body shall be a separate meeting with separate minutes from any other governing body meeting.

(g) If the governing body elects, appoints, or employs officers and administrators to carry out its directives, the governing body shall define the authority, responsibility, and functions of all such positions.

(h) The governing body shall develop a process for appointing or reappointing medical staff, and for assigning or curtailing medical privileges.

(i) The governing body shall provide (in a manner consistent with state law and based on evidence of education, training, and current competence) for the initial appointment, reappointment, and assignment or curtailment of privileges and practice for non-physician health care personnel and practitioners.

(j) The governing body shall encourage personnel to participate in continuing education that is relevant to their responsibilities within the facility.

(k) The governing body shall adopt, implement, and enforce written policies to ensure compliance with applicable state and federal laws.

(l) In accordance with Texas Health and Safety Code §254.157, the facility may not advertise or hold itself out as a network provider, including by stating that the facility "takes" or "accepts" any insurer, health maintenance organization, health benefit plan, or health benefit plan network, unless the facility is a network provider of a health benefit plan issuer.

(m) A facility may not post the name or logo of a health benefit plan issuer in any signage or marketing materials if the facility is an out-of-network provider for all of the issuer's health benefit plans.

(n) The facility shall assess, and the governing body shall review, patient satisfaction with services and environment no less than annually.

§509.42. Governing Body Responsibilities.

The governing body shall address and is fully responsible, either directly or by appropriate professional delegation, for the operation and performance of the facility. Governing body responsibilities include:

(1) determining the mission, goals, and objectives of the facility;

(2) ensuring that facilities and personnel are adequate and appropriate to carry out the mission;

(3) ensuring a physical environment that protects the health and safety of patients, personnel, and the public;

(4) establishing an organizational structure and specifying functional relationships among the various components of the facility;

(5) adopting, implementing, and enforcing bylaws or similar rules and regulations for the orderly development and management of the facility;

(6) adopting, implementing, and enforcing policies or procedures necessary for the orderly conduct of the facility;

(7) reviewing and approving the facility's training program for staff;

(8) ensuring that all equipment used by facility staff or by patients is properly used and maintained per manufacturer recommendations;

(9) adopting, implementing, and enforcing policies or procedures related to emergency planning and disaster preparedness, including reviewing the facility's disaster preparedness plan at least annually;

(10) ensuring there is a quality assessment and performance improvement (QAPI) program to evaluate the provision of patient care, including quarterly review and monitoring of QAPI activities;

(11) reviewing legal and ethical matters concerning the facility and its staff when necessary and responding appropriately;

(12) maintaining effective communication throughout the facility;

(13) establishing a system of financial management and accountability that includes an audit or financial review appropriate to the facility;

(14) adopting, implementing, and enforcing policies for the provision of radiological services;

(15) adopting, implementing, and enforcing policies for the provision of laboratory services;

(16) adopting, implementing, and enforcing policies for the provision of pharmacy services;

(17) adopting, implementing, and enforcing policies for the collection, processing, maintenance, storage, retrieval, authentication, and distribution of patient medical records and reports;

(18) adopting, implementing, and enforcing a policy on the rights of patients and complying with all state and federal patient rights requirements;

(19) adopting, implementing, and enforcing policies for the provision of an effective procedure for the immediate transfer to a licensed hospital of patients requiring emergency care beyond the capabilities of the facility, including a transfer agreement with a hospital licensed in this state in accordance with §509.66 of this subchapter (relating to Patient Transfer Agreements);

(20) adopting, implementing, and enforcing policies for all individuals that arrive at the facility to ensure they are provided an appropriate medical screening examination within the capability of the facility, including ancillary services routinely available to determine whether or not the individual needs emergency care as defined in §509.2 of this chapter (relating to Definitions), and that if emergency care is determined to be needed, the facility shall provide any necessary stabilizing treatment or arrange an appropriate transfer the individual as defined in §509.65 of this subchapter (relating to Patient Transfer Policy);

(21) approving all major contracts or arrangements affecting the medical care provided under its auspices, including those concerning:

(A) the employment of physicians and practitioners;

(B) the use of external laboratories; and

(C) an effective procedure for obtaining emergency laboratory, radiology, and pharmaceutical services when these services are not immediately available due to system failure;

(22) formulating long-range plans in accordance with the mission, goals, and objectives of the facility;

(23) operating the facility without limitation because of color, race, age, sex, religion, national origin, or disability;

(24) ensuring that all marketing and advertising concerning the facility does not imply that it provides care or services that the facility is not capable of providing; and

(25) developing a system of risk management appropriate to the facility, including:

(A) periodic review of all litigation involving the facility, its staff, physicians, and practitioners regarding activities in the facility;

(B) periodic review of all incidents reported by staff and patients;

(C) review of all deaths, trauma, or adverse reactions occurring on premises; and

(D) evaluation of patient complaints.

§509.43. Administration.

(a) Administrative policies, procedures, and controls shall be adopted, implemented, and enforced by the facility administration to ensure the orderly and efficient management of the facility. Administrative responsibilities shall include:

(1) enforcing policies delegated by the governing body;

(2) employing qualified management personnel;

(3) long-range and short-range planning for the needs of the facility, as determined by the governing body;

(4) using methods of communicating and reporting, designed to ensure the orderly flow of information within the facility;

(5) controlling the purchase, maintenance, and distribution of the equipment, materials, and facilities of the facility;

(6) establishing lines of authority, accountability, and supervision of personnel;

(7) establishing controls relating to the custody of the official documents of the facility; and

(8) maintaining the confidentiality, security, and physical safety of data on patients and staff.

(b) Personnel policies shall be adopted, implemented, and enforced by the facility administration to facilitate attainment of the mission, goals, and objectives of the facility. Personnel policies shall:

(1) define and delineate functional responsibilities and authority;

(2) require the employment of personnel with qualifications commensurate with job responsibilities and authority, including appropriate licensure or certification;

(3) require documented periodic appraisal of each person's job performance;

(4) specify responsibilities and privileges of employment;

(5) be made known to employees at the time of employment; and

(6) provide and document adequate orientation and training to familiarize all personnel with the facility's policies, procedures, equipment, and facilities.

(c) A facility shall adopt, implement, and enforce personnel policies that address and are relevant to all employees and contractors.

(d) A facility shall develop appropriate job descriptions for each employee position.

§509.44. Medical Director.

(a) The medical director shall be on-site at the facility when necessary to fulfill the responsibilities of the position, as described by these rules and the governing body.

(b) Notwithstanding subsection (a) of this section, each facility's medical director shall be on-site at the facility for a minimum of 12 hours per month.

(c) The medical director's responsibilities shall include:

(1) organizing the emergency services to be provided at the facility;

(2) supervising and overseeing the infection control program and quality assessment and performance improvement program; and

(3) regularly attending meetings of the infection control program and quality assessment and performance improvement program.

(d) The medical director shall have the authority to contract with outside persons for the performance of the facility's peer review activities as necessary.

§509.45. Medical Staff.

(a) The medical staff shall periodically conduct appraisals of its members according to medical staff bylaws.

(b) The medical staff shall examine credentials of candidates for medical staff membership and make recommendations to the governing body on the appointment of the candidate.

(c) The medical staff shall be well-organized and accountable to the governing body for the quality of the medical care provided to patients.

(1) The medical staff shall be organized in a manner approved by the governing body.

(2) If the medical staff has an executive committee, the members of the committee shall be doctors of medicine or osteopathy.

(3) The facility shall maintain records of medical staff meetings.

(4) The governing body shall assign responsibility for organization and conduct of the medical staff only to an individual physician.

(5) Each medical staff member shall sign a statement signifying that he or she will abide by medical staff and facility policies.

(d) The medical staff shall adopt, implement, and enforce written bylaws, rules, and regulations to carry out its responsibilities. The bylaws shall:

(1) be approved by the governing body;

(2) include a statement of the duties and privileges of each category of medical staff (e.g., active, courtesy, consultant);

(3) describe the organization of the medical staff;

(4) describe the qualifications to be met by a candidate for the medical staff to recommend that the candidate be appointed by the governing body; and

(5) include criteria for determining the privileges to be granted and a procedure for applying the criteria to individuals requesting privileges. To be privileged, a physician must have a minimum of one year of experience in emergency services, and current certification in advanced cardiac life support, pediatric advanced life support, and advanced trauma life support.

§509.46. Facility Staffing and Training.

(a) A facility shall have personnel qualified to operate emergency equipment and to provide emergency care to patients on site and available at all times.

(b) Nursing services.

(1) There shall be an organized nursing service under the direction of a qualified registered nurse (RN). The facility shall be staffed to ensure that the nursing needs of all patients are met.

(2) There shall be a written plan of administrative authority for all nursing services with responsibilities and duties of each category of nursing personnel delineated and a written job description for each category. The scope of nursing services shall be limited to nursing care rendered to patients as authorized by the Nursing Practice Act, Occupations Code Chapter 301.

(A) The responsible individual for nursing services shall be a qualified RN whose responsibility and authority shall be clearly defined and shall include supervision of both personnel performance and patient care.

(B) There shall be a written delineation of functions, qualifications, and patient care responsibilities for all categories of nursing personnel.

(C) Nursing services shall be provided in accordance with current recognized standards or recommended practices.

(3) There shall be an adequate number of RNs on duty to meet minimum staff requirements to include supervisory and staff RNs to ensure the immediate availability of an RN for emergency care or for any patient when needed.

(4) There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of an RN. An RN shall assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the preparation and qualifications of the nursing staff available.

(5) An RN qualified, at a minimum, with current certification in advanced cardiac life support and pediatric advanced life support shall be on duty at the facility at all times whenever patients are present in the facility.

(6) All direct care staff members shall maintain current certification and competency in basic cardiac life support.

(c) In addition to meeting the requirements for nursing staff under subsection (b) of this section, facilities shall comply with the following minimum staffing requirements:

(1) Facilities that provide only topical anesthesia, local anesthesia, or minimal sedation are required to have a second individual on duty at the facility who is trained and currently certified in basic cardiac life support, until all patients have been discharged from the facility.

(2) Facilities that provide moderate sedation/analgesia are required to have the following additional staff:

(A) a second individual on duty at the facility who is trained and currently certified in basic cardiac life support, until all patients have been discharged from the facility; and

(B) an individual trained and currently certified in advanced cardiac life support and pediatric advanced life support, until all patients have been discharged.

(3) Facilities that provide deep sedation/analgesia or regional anesthesia shall have the following additional staff:

(A) a second individual on duty at the facility who is trained and currently certified in basic cardiac life support, until all patients have been discharged from the facility; and

(B) an individual who is trained and currently certified in advanced cardiac life support and pediatric advanced life support, on duty and sufficiently free of other duties to enable the individual to respond rapidly to emergency situations, until all patients have been discharged.

§509.47. Emergency Services.

(a) A facility shall provide to each patient, without regard to the individual's ability to pay, an appropriate medical screening, examination, and stabilization within the facility's capability, including ancillary services routinely available to the facility, to determine whether an emergency medical condition exists, and any necessary stabilizing treatment.

(b) The organization of the emergency services shall be appropriate to the scope of the services offered. The services shall be organized under the direction of a qualified physician member of the medical staff who is the medical director or clinical director.

(c) A facility shall maintain patient medical records for all emergency patients. The medical records shall contain patient identification, complaints, name of physician, name of nurse, time admitted to the emergency suite, treatment, time discharged, and disposition.

(d) Personnel.

(1) There shall be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the facility.

(2) There shall always be on duty and on site at least one person qualified, as determined by the medical staff, to initiate immediate appropriate lifesaving measures; and at least one nurse with current advanced cardiac life support and pediatric advanced life support certification.

(3) Qualified personnel must always be physically present in the emergency treatment area.

(4) One or more physicians shall always be on-site during facility hours of operation.

(5) Schedules, names, and telephone numbers of all physicians and others on emergency call duty, including alternates, shall be maintained. The facility shall retain the schedules for at least one year.

(e) Adequate age-appropriate supplies and equipment shall be available and in readiness for use. Equipment and supplies shall be available for the administration of intravenous medications as well as facilities for the control of bleeding and emergency splinting of fractures. The the facility shall periodically test the emergency equipment according to its policy.

(f) Age-appropriate emergency equipment and supplies shall include the following:

(1) emergency call system;

(2) oxygen;

(3) mechanical ventilatory assistance equipment, including airways, manual breathing bag, and mask;

(4) cardiac defibrillator;

(5) cardiac monitoring equipment;

(6) laryngoscopes and endotracheal tubes;

(7) suction equipment;

(8) emergency drugs and supplies specified by the medical staff;

(9) stabilization devices for cervical injuries;

(10) blood pressure monitoring equipment; and

(11) pulse oximeter or similar medical device to measure blood oxygenation.

(g) Facilities shall participate in the local Emergency Medical Service (EMS) system, based on the facility's capabilities and capacity, and the locale's existing EMS plan and protocols.

(h) Emergency services for sexual assault survivors.

(1) This section does not affect the duty of a facility to comply with the requirements of the federal Emergency Medical Treatment and Active Labor Act of 1986 (42 United States Code §1395dd) that are applicable to the facility.

(2) The facility shall develop, implement, and enforce policies and procedures to ensure that after a sexual assault survivor presents to the facility following a sexual assault, the facility shall provide the care specified under Health and Safety Code Chapter 323 (relating to Emergency Services for Survivors of Sexual Assault).

§509.48. Anesthesia.

(a) If the facility furnishes anesthesia services, these services shall be provided in a well-organized manner under the medical direction of a physician approved by the governing body and qualified in accordance with the Texas Medical Practice Act, Texas Occupations Code, Title 3, Subtitle B, and the Texas Nursing Practice Act, Texas Occupations Code, Chapter 301, as appropriate.

(b) A facility that furnishes anesthesia services shall comply with Occupations Code, Chapter 162, Subchapter C, unless the facility is exempt under Occupations Code, §162.103.

(c) The facility is responsible for and shall document all anesthesia services administered in the facility.

(d) Anesthesia services provided in the facility shall be limited to those that are recommended by the medical staff and approved by the governing body, which may include the following:

(1) Topical anesthesia--An anesthetic agent applied directly or by spray to the skin or mucous membranes, intended to produce transient and reversible loss of sensation to the circumscribed area.

(2) Local anesthesia--Administration of an agent that produces a transient and reversible loss of sensation to a circumscribed portion of the body.

(3) Regional anesthesia--Anesthetic injected around a single nerve, a network of nerves, or vein that serves the area involved in a surgical procedure to block pain.

(4) Minimal sedation (anxiolysis)--A drug-induced state during which patients respond normally to oral commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected.

(5) Moderate sedation/analgesia ("conscious sedation")--A drug-induced depression of consciousness during which patients respond purposefully to oral commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. (Reflex withdrawal from a painful stimulus is not considered a purposeful response.)

(6) Deep sedation/analgesia--A drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. (Reflex withdrawal from a painful stimulus is not considered a purposeful response.)

(e) The medical staff shall develop written policies and practice guidelines for the anesthesia service, which shall be adopted, implemented, and enforced by the governing body. The policies and guidelines shall include consideration of the applicable practice standards and guidelines of the American Society of Anesthesiologists, the American Association of Nurse Anesthetists, and the licensing rules and standards applicable to those categories of licensed professionals qualified to administer anesthesia.

(f) Only personnel who have been approved by the facility to provide anesthesia services shall administer anesthesia. All approvals or delegations of anesthesia services as authorized by law shall be documented and include the training, experience, and qualifications of the person who provided the service. A qualified registered nurse (RN) who is not a certified registered nurse anesthetist (CRNA) may, in accordance with the orders of the physician or CRNA, administer topical anesthesia, local anesthesia, minimal sedation and moderate sedation, in accordance with all applicable rules, polices, directives, and guidelines issued by the Texas Board of Nursing. When an RN who is not a CRNA administers sedation, as permitted in this paragraph, the facility shall:

(1) verify that the RN has the requisite training, education, and experience;

(2) maintain documentation to support that the RN has demonstrated competency in the administration of sedation;

(3) with input from the facility's qualified anesthesia providers, develop, implement, and enforce detailed written policies and procedures to guide the RN; and

(4) ensure that, when administering sedation during a procedure, the RN has no other duties except to monitor the patient.

(g) Anesthesia shall not be administered unless the physician has evaluated the patient immediately before the procedure to assess the risk of the anesthesia and of the procedure to be performed.

(h) Patients who have received anesthesia shall be evaluated for proper anesthesia recovery by the physician, or the person administering the anesthesia, before discharge using criteria approved by the medical staff.

(i) Patients shall be evaluated immediately before leaving the facility by a physician, the person administering the anesthesia, or an RN acting in accordance with physician's orders and written policies, procedures, and criteria developed by the medical staff.

(j) Emergency equipment and supplies appropriate for the type of anesthesia services provided shall always be maintained and accessible to staff.

(k) Functioning equipment and supplies that are required for all facilities include:

(1) suctioning equipment, including a source of suction and suction catheters in appropriate sizes for the population being served;

(2) a source of compressed oxygen;

(3) basic airway management equipment, including oral and nasal airways, face masks, and self-inflating breathing bag valve set;

(4) blood pressure monitoring equipment; and

(5) emergency medications specified by the medical staff and appropriate to the type of procedures and anesthesia services provided by the facility.

(l) In addition to the equipment and supplies required under subsection (k) of this section, facilities which provide moderate sedation/analgesia, deep sedation/analgesia, or regional analgesia shall provide:

(1) intravenous equipment, including catheters, tubing, fluids, dressing supplies, and appropriately sized needles and syringes;

(2) advanced airway management equipment, including laryngoscopes and an assortment of blades, endotracheal tubes, and stylets in appropriate sizes for the population being served;

(3) a mechanism for monitoring blood oxygenation, such as pulse oximetry;

(4) electrocardiographic monitoring equipment;

(5) cardiac defibrillator; and

(6) pharmacologic antagonists, as specified by the medical staff and appropriate to the type of anesthesia services provided.

§509.49. Laboratory and Pathology Services.

(a) The facility shall maintain directly, or have immediately available on the premises, adequate laboratory services to meet the needs of its patients.

(b) Laboratory services shall comply with the Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988), in accordance with the requirements specified in 42 CFR, §§493.1 - 493.1780. CLIA 1988 applies to all facilities with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment, or for health assessment.

(c) The facility shall ensure that all laboratory services provided to its patients through a contractual agreement are performed in a facility certified in the appropriate specialties and subspecialties of service in accordance with the requirements specified in 42 CFR Part 493 to comply with CLIA 1988.

(d) Emergency laboratory services shall be available on the premises during hours of operation, including:

(1) assays for cardiac markers;

(2) hematology;

(3) chemistry; and

(4) pregnancy testing.

(e) A written description of services provided shall be available to the medical staff.

(f) The laboratory shall ensure proper receipt and reporting of tissue specimens.

(g) The medical staff and a pathologist shall determine which tissue specimens require a macroscopic (gross) examination and which require both macroscopic and microscopic examination.

(h) When blood and blood components are stored, the facility shall have written procedures readily available containing directions on how to maintain the blood and blood components within permissible temperatures and including instructions to follow in the event of a power failure or other disruption of refrigeration.

(1) Blood transfusions shall be prescribed in accordance with facility policy and administered in accordance with a written protocol for the administration of blood and blood components and the use of infusion devices and ancillary equipment.

(2) Personnel administering blood transfusions and intravenous medications shall have special training for this duty according to adopted, implemented, and enforced facility policy.

(3) Blood and blood components shall be transfused through a sterile, pyrogen-free transfusion set that has a filter designed to retain particles potentially harmful to the recipient.

(4) Facility staff must observe the patient for potential adverse reactions during the transfusion and for an appropriate time thereafter and document the observations and patient's response.

(5) Pretransfusion and posttransfusion vital signs shall be recorded.

(6) Following the transfusion, the blood transfusion record or a copy shall be made a part of the patient's medical record.

(i) The facility shall establish a mechanism for ensuring that the patient's physician or other licensed health care professional is made aware of critical value lab results, as established by the medical staff, before or after the patient is discharged. A physician shall read, date, sign, and authenticate all laboratory reports.

(j) A facility that provides laboratory services shall adopt, implement, and enforce written policies and procedures to manage, minimize, or eliminate the risks to laboratory personnel of exposure to potentially hazardous chemicals in the laboratory.

§509.50. Pharmaceutical Services.

(a) The facility shall be licensed as required by the Texas State Board of Pharmacy.

(b) The facility shall adopt, implement, and enforce policy and procedures for pharmaceutical services.

(c) The facility shall provide drugs, controlled substances, and biologicals in a safe and effective manner in accordance with professional practices and comply with all state and federal laws and regulations regarding pharmaceutical services.

(d) The facility may make pharmaceutical services available through contractual agreement. Pharmaceutical services provided under contract shall meet the same ethical practices, professional practices, and legal requirements that would be required if those services were provided directly by the facility.

§509.51. Radiology.

(a) The facility shall adopt, implement, and enforce policies and procedures for emergency radiological procedures.

(b) The facility shall provide radiological services that are immediately available on the premises to meet the emergency needs of patients and to adequately support the facility's clinical capabilities, including plain film x-ray.

(c) Facilities shall provide computed tomography (CT) scan services and ultrasound services that are immediately available on the premises.

(d) A physician shall read, date, sign, and authenticate all examination reports.

(e) The radiology department shall meet all applicable federal, state, and local laws, codes, standards, rules, regulations, and ordinances.

(f) Procedure manuals shall include procedures for all examinations performed, infection control in the facility, treatment and examination rooms, dress code of personnel, and cleaning of equipment.

(g) Policies shall address the quality aspects of radiology services, including:

(1) performing radiology services only upon the written order of a physician, advanced practice registered nurse, or other authorized practitioner (such orders shall be accompanied by a concise statement of the reason for the examination); and

(2) limiting the use of any radioactive sources in the facility to physicians who have been granted privileges for such use based on their training, experience, and current competence.

(h) Policies shall address safety, including:

(1) regulation of the use, removal, handling, and storage of any radioactive material that is required to be licensed by the Texas Department of State Health Services Radiation Control Program;

(2) precautions against electrical, mechanical, and radiation hazards;

(3) proper shielding where radiation sources are used;

(4) acceptable monitoring devices for all personnel who might be exposed to radiation that shall be worn by such personnel in any area with a radiation hazard;

(5) maintenance of radiation exposure records on personnel; and

(6) authenticated dated reports of all examinations performed added to the patient's medical record.

§509.52. Respiratory Services.

(a) The facility shall meet the respiratory needs of the patients in accordance with acceptable standards of practice.

(b) The facility shall adopt, implement, and enforce policies and procedures that describe the provision of respiratory care services in the facility.

(c) The organization of the respiratory care services shall be appropriate to the scope and complexity of the services offered.

(d) Personnel qualified to perform specific procedures and the amount of supervision required for personnel to carry out specific procedures shall be designated in writing.

(e) If blood gases or other clinical laboratory tests are performed, staff shall comply with Clinical Laboratory Improvement Amendments of 1988 in accordance with the requirements specified in 42 CFR Part 493.

(f) Respiratory services shall be provided only on, and in accordance with, the orders of a physician, advanced practice registered nurse, or other authorized practitioner.

§509.53. Surgical Services within the Scope of the Practice of Emergency Medicine.

(a) Surgical procedures performed in the facility shall be limited to those emergency procedures that are approved by the governing body upon the recommendation of medical staff.

(b) Adequate supervision of surgical procedures conducted in the facility shall be a responsibility of the governing body, recommended by medical staff, and provided by appropriate medical staff.

(c) Surgical procedures shall be performed only by physicians or practitioners who are licensed to perform surgical procedures in Texas and who have been granted privileges to perform those procedures by the governing body, upon the recommendation of the medical staff, and after medical review of the physician's or practitioner's documented education, training, experience, and current competence.

(d) Surgical procedures to be performed in the facility shall be reviewed periodically as part of the peer review portion of the facility's quality assessment and performance improvement program.

(e) An appropriate history, physical examination, and pertinent preoperative diagnostic studies shall be incorporated into the patient's medical record prior to surgical procedures.

(f) Unless otherwise provided by law, the necessity or appropriateness of the proposed surgical procedure, as well as any available alternative treatment techniques, shall be discussed with the patient, or if applicable, with the patient's legal representative before the surgical procedure.

(g) Licensed nurses and other personnel assisting in the provision of surgical services shall be appropriately trained and supervised and shall be available in sufficient numbers for the surgical care provided.

(h) Each treatment or examination room shall be designed and equipped so that the types of surgical procedures conducted can be performed in a manner that protects the lives and ensures the physical safety of all persons in the area.

(1) If flammable agents are present in a treatment or examination room, the room shall be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 99, Annex 2, Flammable Anesthetizing Locations, 1999) and with applicable state and local fire codes.

(2) If nonflammable agents are present in a treatment or examination room, the room shall be constructed and equipped in compliance with standards established by the National Fire Protection As-

sociation (NFPA 99, Chapters 4 and 8, 1999) and with applicable state and local fire codes.

(i) With the exception of those tissues exempted by the governing body after medical review, tissues removed shall be examined by a pathologist, whose signed or authenticated report of the examination shall be made a part of the patient's medical record.

(j) A description of the findings and techniques of surgical procedures shall be accurately and completely incorporated into the patient's medical record immediately after the procedure by the physician or practitioner who performed the procedure. If the description is dictated, an accurate written summary shall be immediately available to the physicians and practitioners providing patient care and shall become a part of the patient's medical record.

(k) The facility shall provide adequate space, equipment, and personnel to ensure a safe environment for treating patients during surgical procedures, including adequate safeguards to protect the patient from cross infection.

(1) The facility shall isolate patients with communicable diseases.

(2) Acceptable aseptic techniques shall be used by all persons.

(3) Suitable equipment for rapid and routine sterilization shall be available.

(4) The facility shall implement environmental controls that ensure a safe and sanitary environment.

(l) Written policies and procedures for decontamination, disinfection, sterilization, and storage of sterile supplies shall be adopted, implemented, and enforced as described in §509.57 of this subchapter (relating to Sterilization).

(m) Emergency power adequate for the type of surgical procedures performed shall be available.

(n) Periodic calibration and preventive maintenance of all equipment shall be provided in accordance with manufacturer's guidelines.

(o) Unless otherwise provided by law, the informed consent of the patient or, if applicable, of the patient's legal representative shall be obtained before a surgical procedure is performed.

(p) A written procedure shall be established for observation and care of the patient during and after surgical procedures.

(q) Written protocols shall be established for instructing patients in self-care after surgical procedures, including written instructions to be given to patients who receive conscious sedation or regional anesthesia.

(r) Patients who have received anesthesia, other than solely topical anesthesia, shall be allowed to leave the facility only in the company of a responsible adult, unless the physician, physician assistant, or an advanced practice registered nurse writes an order that the patient may leave without the company of a responsible adult.

(s) The facility shall develop an effective written procedure for the immediate transfer to a hospital of patients requiring emergency care beyond the capabilities of the facility. The facility shall have a written transfer agreement with a hospital as set forth in §509.65 of this subchapter (relating to Patient Transfer Policy).

§509.54. Medical Records.

(a) The facility shall develop and maintain a system for the collection, processing, maintenance, storage, retrieval, authentication, and distribution of patient medical records.

(b) The facility shall establish an individual medical record for each patient.

(c) All clinical information relevant to a patient shall be readily available to physicians or practitioners involved in the care of that patient.

(d) Except when otherwise required or permitted by law, any record that contains clinical, social, financial, or other data on a patient shall be strictly confidential and shall be protected from loss, tampering, alteration, improper destruction, and unauthorized or inadvertent disclosure.

(e) The facility shall designate a person to be in charge of medical records. The person's responsibilities include:

(1) the confidentiality, security, and safe storage of medical records;

(2) the timely retrieval of individual medical records upon request;

(3) the specific identification of each patient's medical record;

(4) the supervision of the collection, processing, maintenance, storage, retrieval, and distribution of medical records; and

(5) the maintenance of a predetermined organized medical record format.

(f) The facility shall retain medical records in their original or legally reproduced form for a period of at least 10 years. A legally reproduced form is a medical record retained in hard copy, microform (microfilm or microfiche), or electronic medium. Films, scans, and other image records shall be retained for a period of at least five years.

(1) The facility shall not destroy medical records that relate to any matter that is involved in litigation if the facility knows the litigation has not been finally resolved.

(2) For medical records of a patient less than 18 years of age at the time of last treatment, the facility may dispose of those medical records after the date of the patient's 20th birthday or after the 10th anniversary of the date on which the patient was last treated, whichever date is later, unless the records are related to a matter that is involved in litigation that the facility knows has not been finally resolved.

(3) If a facility plans to close, the facility shall arrange for disposition of the medical records in accordance with applicable law. The facility shall notify HHSC at the time of closure of the disposition of the medical records, including where the medical records will be stored and the name, address, and phone number of the custodian of the records.

(g) Except when otherwise required by law, the content and format of medical records, including the sequence of information, shall be uniform.

(h) Medical records shall be available to authorized physicians and practitioners any time the facility is open to patients.

(i) The facility shall include the following in patients' medical records:

(1) complete patient identification;

(2) date, time, and means of arrival and discharge;

(3) allergies and untoward reactions to drugs recorded in a prominent and uniform location;

(4) all medications administered and the drug dose, route of administration, frequency of administration, and quantity of all drugs administered or dispensed to the patient by the facility and entered on the patient's medical record;

(5) significant medical history of illness and results of physical examination, including the patient's vital signs;

(6) a description of any care given to the patient before the patient's arrival at the facility;

(7) a complete detailed description of treatment and procedures performed in the facility;

(8) clinical observations including the results of treatment, procedures, and tests;

(9) diagnostic impression;

(10) a pre-anesthesia evaluation by an individual qualified to administer anesthesia when administered;

(11) a pathology report on all tissues removed, except those exempted by the governing body;

(12) documentation of a properly executed informed consent when necessary;

(13) for patients with a length of stay greater than eight hours, an evaluation of nutritional needs and evidence of how identified needs were met;

(14) evidence of evaluation of the patient by a physician or advanced practice registered nurse before dismissal; and

(15) conclusion at the termination of evaluation or treatment, including final disposition, the patient's condition on discharge or transfer, and any instructions given to the patient or family for follow-up care.

(j) Medical advice given to a patient by telephone shall be entered in the patient's medical record and dated, timed, and authenticated.

(k) Entries in medical records shall be legible, accurate, complete, dated, timed, and authenticated by the person responsible for providing or evaluating the service provided no later than 48 hours after discharge.

(l) When necessary for ensuring continuity of care, summaries or photocopies of the patient's record shall be transferred to the physician or practitioner to whom the patient was referred and, if appropriate, to the facility where future care will be rendered.

§509.55. Infection Control.

(a) The facility shall provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. The facility shall have an infection control program for the prevention, control, and surveillance of infections and communicable diseases.

(1) The facility shall designate an infection control professional. The facility shall ensure that policies governing prevention, control, and surveillance of infections and communicable diseases are adopted, implemented, and enforced.

(2) The facility shall have a system for identifying, reporting, investigating, and controlling health care-associated infections and communicable diseases between patients and personnel.

(3) The infection control professional shall maintain a log of all reportable diseases and health care-associated infections designated as epidemiologically significant according to the facility's infection control policies.

(4) The facility shall adopt, implement, and enforce a written policy for reporting all reportable diseases to the local health authority and the Texas Department of State Health Services Infectious Disease Prevention Section, in accordance with Title 25, Chapter 97 (relating to Communicable Diseases).

(5) The infection control program shall include active participation by the medical staff, nursing staff, pharmacist, and other practitioners as appropriate.

(b) The medical director shall be responsible for ensuring that the facility-wide quality assessment and performance improvement program and training programs address problems identified by the infection control professional.

(c) The medical director shall be responsible for ensuring that the facility implements successful corrective action plans in affected problem areas.

(d) The facility shall adopt, implement, and enforce a written policy to monitor compliance of the facility and its personnel and medical staff with universal precautions in accordance with Texas Health and Safety Code Chapter 85 (relating to Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus Infection).

§509.56. Sanitary Conditions and Hygienic Practices.

(a) General infection control measures. Universal precautions shall be followed in the facility for all patient care activities in accordance with 29 CFR §1910.1030(d)(1) - (3) and Texas Health and Safety Code Chapter 85, Subchapter I (relating to Prevention of Transmission of HIV and Hepatitis B Virus by Infected Health Care Workers).

(b) Physical environment.

(1) A facility shall develop, implement, and enforce policies and procedures to provide and actively monitor a safe, functional, comfortable, and sanitary environment which minimizes or prevents transmission of infectious diseases for all patients and visitors and the public.

(2) Blood spills shall be cleaned immediately or as soon as is practical with a disposable cloth and an appropriate chemical disinfectant.

(A) The surface shall be subjected to intermediate-level disinfection in accordance with the manufacturer's directions for use, if a commercial liquid chemical disinfectant is used.

(B) If a solution of chlorine bleach (sodium hypochlorite) is used, the solution shall be at least 1:100 sodium hypochlorite and mixed in accordance with the manufacturer's directions for use. The surface to be treated shall be compatible with this type of chemical treatment.

(C) The facility shall use dedicated cleaning supplies (i.e., mop, bucket) for cleaning blood spills.

§509.57. Sterilization.

(a) A person qualified by education, training, and experience shall supervise the sterilization of all supplies and equipment. Staff responsible for sterilizing supplies and equipment shall participate in a documented continuing education program. New employees shall receive initial orientation and on-the-job training. Staff using chemical disinfectants shall have received training on their use.

(b) The facility shall adopt, implement, and enforce written policies and procedures for decontamination and sterilization activities. Policies shall include receiving, cleaning, decontaminating, disinfecting, preparing, and sterilizing reusable items, as well as assembly, wrapping, storage, distribution, and quality control of sterile items and equipment. The infection control practitioner or committee shall review and approve these written policies at least every other year.

(c) Every facility shall provide equipment adequate for sterilizing supplies and equipment, as needed. Equipment shall be maintained and operated to perform, with accuracy, sterilization of the various materials required.

(d) Where cleaning, preparation, and sterilization functions are performed in the same room or unit, the physical facilities, equipment, and policies and procedures for their use, shall effectively separate soiled or contaminated supplies and equipment from clean or sterilized supplies and equipment. Hand-washing facilities shall be provided, and a separate sink shall be provided for safe disposal of liquid waste.

(e) All containers for solutions, drugs, flammable solvents, ether, alcohol, and medicated supplies shall be clearly labeled to indicate contents. Containers that are sterilized by the facility shall be labeled to be identifiable before and after sterilization. Sterilized items shall have a load control identification that indicates the sterilizer used, the cycle or load number, and the date of sterilization.

(f) Sterilizers.

(1) Steam sterilizers (saturated steam under pressure) shall be used to sterilize heat- and moisture-stable items. Steam sterilizers shall be used according to manufacturer's written instructions.

(2) Ethylene oxide (EO) sterilizers shall be used for processing heat- and moisture-sensitive items. EO sterilizers and aerators shall be used and vented according to the manufacturer's written instructions.

(3) Flash sterilizers shall be used for emergency sterilization of clean, unwrapped instruments and porous items only.

(g) Preparation for sterilization.

(1) All items to be sterilized shall be prepared to reduce the bioburden. All items shall be thoroughly cleaned, decontaminated, and prepared in a clean, controlled environment.

(2) All articles to be sterilized shall be arranged so all surfaces will be directly exposed to the sterilizing agent for the prescribed time and temperature.

(3) All wrapped articles to be sterilized shall be packaged in materials recommended for the specific type of sterilizer and material to be sterilized.

(h) External chemical indicators.

(1) External chemical indicators, also known as sterilization process indicators, shall be used on each package to be sterilized, including items being flash sterilized to indicate that items have been exposed to the sterilization process.

(2) The indicator results shall be interpreted according to manufacturer's written instructions and indicator reaction specifications.

(3) A log shall be maintained with the load identification, indicator results, and identification of the contents of the load.

(i) Biological indicators are commercially-available microorganisms (e.g., United States Food and Drug Administration-approved strips or vials of Bacillus species endospores) that can be used to verify the performance of waste treatment equipment and processes or sterilization equipment and processes.

(1) The efficacy of the sterilizing process shall be monitored with reliable biological indicators appropriate for the type of sterilizer used.

(2) Biological indicators shall be included in at least one run each week of use for steam sterilizers, at least one run each day of use for low-temperature hydrogen peroxide gas sterilizers, and every load for EO sterilizers.

(3) Biological indicators shall be included in every load that contains implantable objects.

(4) A log shall be maintained with the load identification, biological indicator results, and identification of the contents of the load.

(5) If a test is positive, the sterilizer shall immediately be taken out of service.

(A) Implantable items shall be recalled and reprocessed if a biological indicator test (spore test) is positive.

(B) All available items shall be recalled and reprocessed if a sterilizer malfunction is found and a list of those items not retrieved in the recall shall be submitted to infection control.

(C) A malfunctioning sterilizer shall not be put back into use until it has been serviced and successfully tested according to the manufacturer's recommendations.

(j) Disinfection.

(1) The facility shall adopt, implement, and enforce written policies, approved by the infection control committee, for the use of chemical disinfectants.

(2) The manufacturer's written instructions for the use of disinfectants shall be followed.

(3) An expiration date, determined according to manufacturer's written recommendations, shall be marked on the container of disinfection solution currently in use.

(4) Disinfectant solutions shall be kept covered and used in well-ventilated areas.

(5) Chemical germicides that are registered with the United States Environmental Protection Agency as "sterilants" may be used either for sterilization or high-level disinfection.

(6) All staff personnel using chemical disinfectants shall receive training on their use.

(k) Performance records.

(1) Performance records for all sterilizers shall be maintained for each cycle. These records shall be retained and available for review for a minimum of five years.

(2) Each sterilizer shall be monitored continuously during operation for pressure, temperature, and time at desired temperature and pressure. A record shall be maintained and shall include:

(A) the sterilizer identification;

(B) sterilization date;

(C) cycle number;

(D) contents of each load;

(E) duration and temperature of exposure phase (if not provided on sterilizer recording charts);

(F) identification of operator or operators;

(G) results of biological tests and dates performed;

(H) time-temperature recording charts from each sterilizer;

(I) gas concentration and relative humidity (if applicable); and

(J) any other test results.

(l) Storage of sterilized items.

(1) Sterilized items shall be transported to maintain cleanliness and sterility and to prevent physical damage.

(2) Sterilized items shall be stored in well-ventilated, limited access areas with controlled temperature and humidity.

(3) The facility shall adopt, implement, and enforce a policy that describes the mechanism used to determine the shelf life of sterilized packages.

(m) Qualified personnel shall perform preventive maintenance of all sterilizers according to adopted, implemented, and enforced policy on a scheduled basis, using the sterilizer manufacturer's service manual as a reference. A preventive maintenance record shall be maintained for each sterilizer. These records shall be retained at least two years and shall be available for review at the facility within two hours of request by HHSC.

§509.58. Linen and Laundry Services.

(a) The facility shall adopt, implement, and enforce policies to provide sufficient clean linen to ensure the comfort of the patient.

(b) For purposes of this subsection, contaminated linen is linen that has been soiled with blood or other potentially infectious materials or may contain sharps. Other potentially infectious materials means:

(1) the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(2) any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

(3) Human Immunodeficiency Virus (HIV)-containing cell or tissue cultures, organ cultures, and HIV or Hepatitis B Virus (HBV)-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

(c) The facility, whether it operates its own laundry or uses a commercial service, shall ensure that employees of a facility involved in transporting, processing, or otherwise handling clean or soiled linen shall be given initial and follow-up in-service training to ensure a safe product for patients and to safeguard employees in their work.

(d) Employees who have contact with contaminated linen shall wear gloves and other appropriate personal protective equipment.

(e) Clean linen shall be handled, transported, and stored by methods that will ensure its cleanliness.

(f) Contaminated linen shall be handled as little as possible and with a minimum of agitation.

(1) Contaminated linen shall not be sorted or rinsed in patient care areas.

(2) Contaminated linen shall be bagged or put into carts at the location where it was used.

(3) Contaminated linen shall be placed and transported in bags or containers that are labeled or color-coded.

(4) Bags containing contaminated linen shall be closed before transport.

(5) Whenever contaminated linen is wet and presents a reasonable likelihood of soak-through or leakage from the bag or container, the linen shall be deposited and transported in bags that prevent leakage of fluids to the exterior.

(g) All linen placed in chutes shall be bagged.

(h) If chutes are not used to convey linen to a central receiving or sorting room, then adequate space shall be allocated in the facility for holding the bagged contaminated linen.

(i) Linen shall be processed in the following manner:

(1) If hot water is used, linen shall be washed with detergent in water with a temperature of at least 71 degrees Centigrade (160 degrees Fahrenheit) for 25 minutes.

(2) If low-temperature (less than or equal to 70 degrees Centigrade, 158 degrees Fahrenheit) laundry cycles are used, chemicals suitable for low-temperature washing at proper use concentration shall be used.

(3) Fabrics soiled with blood may be commercially dry cleaned (because dry cleaning eliminates the risk of pathogen transmission).

(4) Flammable liquids shall not be used to process laundry but may be used for equipment maintenance.

§509.59. Waste and Waste Disposal.

(a) Special waste and liquid or sewage waste management.

(1) Facilities shall comply with the requirements set forth by the Texas Commission on Environmental Quality (TCEQ) in 30 TAC, Chapter 326 (relating to Medical Waste Management).

(2) All sewage and liquid wastes shall be disposed of in a municipal sewerage system or a septic tank system permitted by the TCEQ in accordance with 30 TAC Chapter 285 (relating to On-Site Sewage Facilities).

(3) Facilities shall comply with the requirements set forth in 25 TAC Chapter 1, Subchapter K (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(b) Waste receptacles.

(1) Waste receptacles shall be conveniently available in all toilet rooms, patient areas, staff work areas, and waiting rooms. Receptacles shall be routinely emptied of their contents at a central location into closed containers.

(2) Waste receptacles shall be properly cleaned with soap and hot water, followed by treatment of inside surfaces of the receptacles with a germicidal agent.

(3) All containers for other municipal solid waste shall be leak-resistant, have tight-fitting covers, and be rodent-proof.

(4) Non-reusable containers shall be of suitable strength to minimize animal scavenging or rupture during collection operations.

§509.60. Patient Rights.

(a) Patients shall be treated with respect, consideration, and dignity.

(b) Patients shall be provided appropriate privacy.

(c) Patient records shall be treated confidentially. Patients shall be given the opportunity to approve or refuse release of patient records, except when release of the records is authorized by law.

(d) Patients shall be provided, to the degree known, appropriate information concerning their diagnosis, treatment, and prognosis. When it is medically inadvisable to give such information to a patient, the information shall be provided to a person designated by the patient or to a legally authorized person.

(e) Patients shall be given the opportunity to participate in decisions involving their health care, except when the patient's participation is contraindicated for medical reasons.

(f) The facility shall provide information to patients and staff concerning:

(1) patient rights, including those specified in subsections (a) - (e) of this section;

(2) patient conduct and responsibilities;

(3) services available at the facility;

(4) fees for services provided;

(5) payment policies; and

(6) methods for expressing complaints and suggestions to the facility.

(g) Marketing or advertising shall not be misleading to patients.

(h) A facility shall post a notice of fees in accordance with Texas Health and Safety Code §254.155.

(i) A facility shall provide to a patient or a patient's legally authorized representative a written disclosure statement, detailing the facility's fees and health benefit plans, in accordance with Texas Health and Safety Code §254.156.

(j) a facility shall comply with Texas Health and Safety Code Chapter 324, Subchapter C (relating to Consumer Access to Health Care Information).

§509.61. Abuse and Neglect.

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

(1) Abuse--The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment, including pain or sexual abuse, that adversely affects the physical, mental, or emotional welfare of a patient.

(2) Exploitation--The use of a patient's resources for monetary or personal benefit, profit, or gain without the informed consent of the patient.

(3) Illegal conduct--Conduct prohibited by law.

(4) Neglect--The failure to provide goods or services that are necessary to avoid adversely affecting the physical, mental, or emotional welfare of a patient.

(5) Unethical conduct--Conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(6) Unprofessional conduct--Conduct prohibited under rules adopted by the state licensing agency for the respective profession.

(b) The facility or a person associated with a facility, including an employee, volunteer, health care professional, or other person, shall immediately report all incidents of abuse, neglect, exploitation, illegal conduct, unethical conduct, or unprofessional conduct to HHSC and any other appropriate regulatory agency. This includes any information that would reasonably cause a person to believe that an incident of abuse, neglect, exploitation, illegal conduct, unethical conduct, or unprofessional conduct has occurred, is occuring, or will occur.

(c) A facility shall prominently and conspicuously post for display a statement of the duty to report abuse, neglect, exploitation, illegal conduct, unethical conduct, or unprofessional conduct.

(1) The display shall be posted in a public area of the facility and shall be readily visible to patients, residents, volunteers, employees, and visitors.

(2) The statement shall be in English and in a second language as appropriate to the demographic makeup of the community served.

(3) The statement shall contain the contact information for HHSC Complaint and Incident Intake.

(d) A facility shall comply with the requirements in 25 TAC Chapter 1, Subchapter Q (relating to Investigations of Abuse, Neglect, or Exploitation of Children or Elderly or Disabled Persons).

§509.62. Reporting Requirements.

(a) A facility shall report the following incidents to HHSC:

(1) the death of a patient while under the care of the facility;

(2) a patient stay exceeding 23 hours; and

(3) 9-1-1 activation.

(b) Reports under subsection (a) shall be on a form provided by HHSC. The report shall contain a written explanation of the incident and the name of the individual responsible. The report shall be submitted online or through a telephone call to HHSC Complaint and Incident Intake not later than the 10th business day after the incident.

(c) A facility shall report any abuse, theft, or diversion of controlled drugs in accordance with applicable federal and state laws and shall report the incident to the chief executive officer of the facility.

(d) A facility shall report occurrences of fires in the facility as specified under Chapter 520 of this title (relating to Guidelines for Design, Construction, and Fire Safety in Health Care Facilities).

§509.63. Quality Assessment and Performance Improvement.

(a) Each facility shall develop, implement, maintain, and evaluate an effective, ongoing, facility-wide, data-driven, interdisciplinary quality assessment and performance improvement (QAPI) program. The program shall be individualized to the facility and meet the criteria and standards described in this section.

(b) The program shall reflect the complexity of the facility's organization and services involved. All facility services (including those services furnished under contract or arrangement) shall focus on indicators related to improved health outcomes and the prevention and reduction of medical errors.

(c) The program shall include an ongoing program that achieves measurable improvement in health outcomes and reduction of medical errors by using indicators or performance measures asso-

ciated with improved health outcomes and with the identification and reduction of medical errors.

(d) The facility shall demonstrate that facility staff, including the medical, nursing, and pharmacy staff, evaluate the provision of emergency care and patient services, set treatment goals, identify opportunities for improvement, develop and implement improvement plans, and evaluate the implementation until resolution is achieved.

(e) The facility shall measure, analyze, and track quality indicators, or other aspects of performance that the facility adopts or develops, that reflect processes of care and facility operations.

(f) The facility shall provide evidence supporting that the facility continuously reviews aggregate patient data, including identification and tracking of patient infections, for trends.

(g) Core staff members, including the medical, nursing, and pharmacy staff, shall actively participate in the QAPI activities, including QAPI meetings.

(1) QAPI meetings shall be held monthly, or more often as necessary, to identify or correct problems.

(2) QAPI meetings shall be documented.

(h) The facility's QAPI program shall include:

(1) an ongoing review of key elements of care using comparative and trend data to include aggregate patient data;

(2) identification of areas where performance measures or outcomes indicate an opportunity for improvement;

(3) appointment of interdisciplinary improvement teams to:

(A) identify, measure, analyze, and track indicators for variation from desired outcomes;

(B) create and implement improvement plans;

(C) evaluate the implementation of the improvement plans; and

(D) continue monitoring and improvement activities until resolution of the improvement plan;

(4) establishment and monitoring of quality indicators related to improved health outcomes. For each quality assessment indicator, the facility shall establish and monitor a level of performance consistent with current professional knowledge. These performance components shall influence or relate to the desired outcomes themselves. At a minimum, the following indicators shall be measured, analyzed, and tracked monthly:

(A) infection control (staff and patient screening; standard precautions);

(B) adverse events;

(C) mortality (review of each death and monitoring modality specific mortality rates);

(D) complaints and suggestions (from patients, family, or staff);

(E) staffing to include orientation, training, delegation, licensing and certification, and non-adherence to policies and procedures by facility staff;

(F) safety (fire and disaster preparedness, use of a HHSC-approved reporting system, and disposal of special waste); and

(G) clinical records review to include treatment errors and medication errors; and

(5) the facility shall continuously monitor performance, take actions that result in performance improvement, and track performance to ensure that improvements are sustained over time. The facility shall immediately correct any identified problems that threaten the health and safety of patients.

(i) HHSC may review a facility's QAPI activities to determine compliance with this section.

(1) A HHSC inspector shall verify that the facility has a QAPI program which addresses concerns relating to quality of care provided to its patients and that the core staff members have knowledge of and the ability to access the facility's QAPI program.

(2) HHSC may not require disclosure of QAPI program records, except when disclosure is necessary for HHSC to determine compliance with this section.

§509.64. Safety and Preparedness.

(a) The facility shall be in accordance with Chapter 520 of this title (relating to Guidelines for Design, Construction, and Fire Safety in Health Care Facilities).

(b) The facility shall maintain information on the HHSC approved reporting system to be updated online monthly.

(c) The facility shall obtain an annual fire safety inspection from the local fire authority in whose jurisdiction the facility is based.

§509.65. Patient Transfer Policy.

(a) General.

(1) The governing body of each facility shall adopt, implement, and enforce a policy relating to patient transfers that is consistent with this section and contains each of the requirements in subsection (b) of this section. The policies shall identify facility staff that has authority to represent the facility and the physician regarding transfers from the facility.

(2) The governing body shall adopt the transfer policy after consultation with the medical staff, and the transfer policy shall apply to transfers to hospitals licensed under Texas Health and Safety Code Chapters 241 and 577, as well as transfers to hospitals that are exempt from licensing.

(3) The transfer policy shall govern transfers not covered by a transfer agreement.

(4) The transfer policy shall include a written operational plan to provide for patient transfer transportation services if the facility does not provide its own patient transfer transportation services.

(5) The governing body, after consultation with the medical staff, shall implement its transfer policy by adopting transfer agreements with hospitals in accordance with §509.66 of this subchapter (relating to Patient Transfer Agreements).

(6) The transfer policy shall recognize and comply with the applicable requirements of the Indigent Health Care and Treatment Act, Texas Health and Safety Code, Chapter 61.

(7) The transfer policy shall acknowledge contractual obligations and comply with statutory or regulatory obligations which may exist concerning a patient and a designated provider.

(8) The transfer policy shall require that all reasonable steps are taken to secure the written informed consent of a patient, or of a person acting on a patient's behalf, when refusing a transfer or related examination and treatment. Reasonable steps include:

(A) a factual explanation of the increased medical risks to the patient reasonably expected from not being transferred, examined, or treated at the transferring hospital;

(B) a factual explanation of any increased risks to the patient from not effecting the transfer;

(C) a factual explanation of the medical benefits reasonably expected from the provision of appropriate treatment at another hospital; and

(D) The informed refusal of a patient, or of a person acting on a patient's behalf, to examination, evaluation or transfer shall be documented and signed if possible by the patient or by a person acting on the patient's behalf, dated and witnessed by the attending physician or facility employee, and placed in the patient's medical record.

(9) The transfer policy shall recognize the right of an individual to request a transfer into the care of a physician and a hospital of the individual's own choosing.

(b) Requirements for transfer of patients from facilities to hospitals.

(1) The transfer policy shall provide that the transfer of a patient may not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition, economic status, insurance status or ability to pay.

(2) The transfer policy shall recognize the right of an individual to request transfer into the care of a physician and a hospital of his own choosing; however, if a patient requests or consents to transfer for economic reasons and the patient's choice is predicated upon or influenced by representations made by the transferring physician or facility administration regarding the availability of medical care and hospital services at a reduced cost or no cost to the patient, the physician or facility administration shall fully disclose to the patient the eligibility requirements established by the patient's chosen physician or hospital.

(3) The transfer policy shall provide that each patient who arrives at the facility is:

(A) evaluated by a physician at the time the patient presents; and

(B) personally examined and evaluated by the physician before an attempt to transfer is made.

(4) The policy of the transferring facility and receiving hospital shall provide that licensed nurses and other qualified personnel are available and on duty to assist with patient transfers. The policy shall provide that written protocols or standing delegation orders are in place to guide facility personnel when a patient requires transfer to another hospital.

(5) Special requirements related to the transfer of patients who have emergency medical conditions:

(A) If a patient at a facility has an emergency medical condition that has not been stabilized, or when stabilization of the patient's vital signs is not possible because the facility does not have the appropriate equipment or personnel to correct the underlying process, the facility shall evaluate and treat the patient and shall transfer the patient as quickly as possible.

(B) The transfer policy shall provide that the facility may not transfer a patient with an emergency medical condition that has not been stabilized unless:

(i) the individual or the individual's legally authorized representative, after being informed of the facility's obligations under this section and of the risk of transfer, requests the transfer, in writing, and indicates the reasons for the request, as well as that he or she is aware of the risks and benefits of the transfer;

(ii) a physician has signed a certification, which includes a summary of the risks and benefits, that, based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at a hospital outweigh the increased risks to the patient and, in the case of labor, to the unborn child from effecting the transfer; or

(C) Except as is specifically provided in subsection (a)(6) and (7) of this section, the transfer policy shall provide that the transfer of patients who have emergency medical conditions, as determined by a physician, shall be undertaken for medical reasons only. The facility must provide medical treatment within its capacity that minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child.

(6) Physician's duties and standard of care. The transfer policy shall provide that:

(A) the transferring physician shall determine and order life support measures that are medically appropriate to stabilize the patient before transfer and to sustain the patient during transfer;

(B) the transferring physician shall determine and order the utilization of appropriate personnel and equipment for the transfer;

(C) in determining the use of medically appropriate life support measures, personnel, and equipment, the transferring physician shall exercise that degree of care which a reasonable and prudent physician exercising ordinary care in the same or similar locality would use for the transfer;

(D) except as allowed under paragraph (5)(B) of this subsection, before each patient transfer, the physician who authorizes the transfer shall personally examine and evaluate the patient to determine the patient's medical needs and to ensure that the proper transfer procedures are used;

(E) before transfer, the transferring physician shall ensure that a receiving hospital and physician that are appropriate to the medical needs of the patient have accepted responsibility for the patient's medical treatment and hospital care; and

(7) the facility's medical staff review appropriate records of patients transferred from the facility to determine that the appropriate standard of care has been met.

(8) Medical record.

(A) The facility's policy shall require that a copy of those portions of the patient's medical record that are available and relevant to the transfer and to the continuing care of the patient be forwarded to the receiving physician and receiving hospital with the patient. If all necessary medical records for the continued care of the patient are not available at the time the patient is transferred, the records shall be forwarded to the receiving physician and hospital as soon as possible.

(B) The medical record shall contain at a minimum:

(i) a brief description of the patient's medical history and physical examination;

(ii) a working diagnosis and recorded observations of physical assessment of the patient's condition at the time of transfer;

(iii) the reason for the transfer;

(iv) the results of all diagnostic tests, such as laboratory tests;

(v) pertinent radiological films and reports; and

(vi) any other pertinent information.

(9) Memorandum of transfer.

(A) The facility's policy shall require that a memorandum of transfer be completed for every patient who is transferred.

(B) The memorandum shall contain the following information:

(i) patient's full name, if known;

(ii) patient's race, religion, national origin, age, sex, physical handicap, if known;

(iii) patient's address and next of kin, address, and phone number, if known;

(iv) names, telephone numbers, and addresses of the transferring and receiving physicians;

(v) names, addresses, and telephone numbers of the transferring facility and receiving hospital;

(vi) time and date on which the patient first presented or was presented to the transferring physician and transferring facility;

(vii) time and date on which the transferring physician secured a receiving physician;

(viii) name, date, and time hospital administration was contacted in the receiving hospital;

(ix) signature, time, and title of the transferring facility administration who contacted the receiving hospital;

(x) certification required by paragraph (5)(B)(ii) of this subsection, if applicable (the certification may be part of the memorandum of transfer form or may be on a separate form attached to the memorandum of transfer form);

(xi) time and date on which the receiving physician assumed responsibility for the patient;

(xii) time and date on which the patient arrived at the receiving hospital;

(xiii) signature and date of receiving hospital administration;

(xiv) type of vehicle and company used to transport the patient;

(xv) type of equipment and personnel needed in the transfer;

(xvi) name and city of hospital to which patient was transported;

(xvii) diagnosis by transferring physician; and

(xviii) attachments by transferring facility.

(C) A copy of the memorandum of transfer shall be retained by the transferring facility. The memorandum shall be filed separately from the patient's medical record and in a manner that will facilitate its inspection by HHSC. All memorandum of transfer forms filed separately shall be retained for at least five years.

(c) A facility violates the Act and this section if:

(1) the facility fails to comply with the requirements of this section; or

(2) the governing body fails or refuses to:

(A) adopt a transfer policy that is consistent with this section and contains each of the requirements in subsection (b) of this section;

(B) adopt a memorandum of transfer form that meets the minimum requirements for content contained in this section; or

(C) enforce its transfer policy and the use of the memorandum of transfer.

§509.66. Patient Transfer Agreements.

(a) General provisions.

(1) Patient transfer agreements between a facility and hospitals are mandatory.

(2) The facility shall submit the transfer agreement to HHSC for review to determine if the agreement meets the requirements of subsection (b) of this section.

(3) Multiple transfer agreements may be entered into by a facility based upon the type or level of medical services available at other hospitals.

(b) Minimum requirements for patient transfer agreements. Patient transfer agreements shall include specific language that is consistent with the following:

(1) the Indigent Health Care Treatment Act, in accordance with §509.65(a)(6) of this subchapter (relating to Patient Transfer Policy);

(2) discrimination, in accordance with §509.65(b)(1) of this subchapter;

(3) patient's right to request transfer, in accordance with §509.65(b)(2) of this subchapter;

(4) transfer of patients with emergency medical conditions, in accordance with §509.65(b)(5) of this subchapter;

(5) physician's duties and standard of care, in accordance with §509.65(b)(6) of this chapter;

(6) medical records, in accordance with §509.65(b)(8) of this subchapter; and

(7) memorandum of transfer, in accordance with §509.65(b)(9) of this chapter.

(c) Review of transfer agreements.

(1) In order that HHSC may review the transfer agreements for compliance with the minimum requirements, the facility shall submit the following documents to HHSC:

(A) a copy of the current or proposed agreement signed by the representatives of the facility and the hospital;

(B) the date of the adoption of the agreement; and

(C) the effective date of the agreement.

(2) HHSC may waive the submittal of the documents required under paragraph (1) of this subsection to avoid the repetitious submission of required documentation and approved agreements.

(3) If a governing body or a governing body's designee executes a transfer agreement and the entire text of that agreement consists of the entire text of an agreement that has been previously approved by HHSC, the governing body or the governing body's designee is not required to submit the later agreement for review. On the date the later agreement is fully executed and before the later agreement is imple-

mented, the governing body or the governing body's designee shall give notice to HHSC that the later agreement has been executed.

(4) HHSC shall review the agreement not later than 30 calendar days after the date HHSC receives the agreement to determine if the agreement is consistent with the requirements of this section.

(5) After HHSC review of the agreement, if HHSC determines that the agreement is consistent with the requirements contained in this section, HHSC shall notify the facility administration that the agreement has been approved.

(6) If HHSC determines that the agreement is not consistent with the requirements contained in this section, HHSC shall give notice to the facility administration that the agreement is deficient and provide recommendations for correction.

(7) A transfer agreement will be considered in compliance if it is consistent with the rules that were in effect at the time the transfer agreement was executed and approved by HHSC.

(d) Amendments to an agreement.

(1) The governing body of a facility or governing body's designee may adopt proposed amendments to a transfer agreement that has been approved by HHSC. Before the facility implements the amendments, the governing body or the governing body's designee shall submit the proposed amendments to HHSC for review in the same manner as the agreement was submitted.

(2) HHSC shall review the amendments and shall approve or reject them in the same manner as provided for the review of the agreement.

(e) Complaints. Complaints alleging a violation of a transfer agreement shall be treated in the same manner as complaints alleging violations of the Act or this chapter.

§509.67. Miscellaneous Policies and Protocol.

The facility shall adopt, implement, and enforce protocols to be used in determining death and for filing autopsy reports that comply with Texas Health and Safety Code, Chapter 671 (relating to Determination of Death and Autopsy Reports).

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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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 834-4591

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SUBCHAPTER D. INSPECTION AND INVESTIGATION PROCEDURES

26 TAC §§509.81 - 509.85

STATUTORY AUTHORITY

The new rules 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 §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The new rules implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§509.81. Inspections.

(a) HHSC may conduct an unannounced, on-site inspection of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

(1) compliance with any applicable statute or rule;

(2) a facility's plan of correction;

(3) an order of the commissioner or the commissioner's designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(b) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its facilities by HHSC.

(c) HHSC inspections to evaluate a facility's compliance may include:

(1) initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) routine inspections, which may be conducted without notice and at HHSC's discretion, or prior to renewal;

(4) follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) inspections to determine if an unlicensed facility is offering or providing, or purporting to offer or provide, treatment; and

(6) entry in conjunction with any other federal, state, or local agency's entry.

(d) A facility shall cooperate with any HHSC inspection and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the facility.

(e) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(f) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC will provide a written description of the information being removed and when it is expected to be returned. HHSC will make a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(g) Upon entry, HHSC will hold an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the inspection.

(h) During the inspection, the HHSC representative will give the facility an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(i) When an inspection is complete, HHSC will hold an exit conference with the facility representative to inform the facility representative of any preliminary findings of the inspection. The facility

may provide any final documentation regarding compliance during the exit conference.

§509.82. Complaint Investigations.

(a) A facility shall provide each client and applicable consenter at the time of admission with a written statement identifying HHSC as the agency responsible for investigating complaints against the facility.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The facility shall prominently and conspicuously post this information in patient common areas and in visitor's areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC will evaluate all complaints. A complaint must be submitted using HHSC's current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC will document, evaluate, and prioritize complaints based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC's regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) Complaints outside HHSC's jurisdiction may be referred to an appropriate agency, as applicable.

(d) Investigations to evaluate a facility's compliance shall be conducted following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients.

(e) HHSC may conduct an unannounced, on-site investigation of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

(1) a facility's compliance with any applicable statute or rule;

(2) a facility's plan of correction;

(3) a facility's compliance with an order of the commissioner or the commissioner's designee;

(4) a facility's compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A facility shall cooperate with any HHSC investigation and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the facility.

(h) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(i) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC will provide a written description of the information being removed and when it is expected to be returned. HHSC will make a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(j) Upon entry, HHSC will hold an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the investigation.

(k) Once an investigation is complete, HHSC will review the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

§509.83. Notice.

(a) A facility is deemed to have received any HHSC correspondence on the date of receipt, or three business days after mailing through the United States Postal Service, whichever is earlier.

(b) When deficiencies are found:

(1) HHSC will provide the facility with a written Statement of Deficiencies (SOD) within 10 business days of the exit conference via mail or email.

(2) Within 10 calendar days of the facility's receipt of the SOD, the facility shall return a written Plan of Correction (POC) to HHSC that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC will determine if a POC and proposed timeframes are acceptable, and, if accepted, notify the facility in writing.

(B) If the POC is not accepted by HHSC, HHSC will notify the facility in writing no later than 10 business days after notification and request a modified POC and any additional evidence.

(C) The facility shall correct the identified deficiencies and submit evidence to HHSC verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of the facility's compliance with this subsection or HHSC's acceptance of a facility's POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§509.84. Professional Conduct.

In addition to any enforcement action under this chapter, HHSC will report in writing to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§509.85. Complaint Against a HHSC Representative.

(a) A facility may register a complaint against a HHSC representative who conducts an inspection or investigation in accordance with Subchapter D of this chapter (relating to Inspection and Investigation Procedures).

(b) HHSC shall register all complaints against an HHSC representative with the HHSC Health Facility Compliance Manager.

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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Karen Ray
Chief Counsel
Health and Human Services Commission
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SUBCHAPTER E. ENFORCEMENT

26 TAC §§509.101 - 509.109

The new rules 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 §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The new rules implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§509.101. Enforcement Actions.

(a) HHSC has jurisdiction to enforce Texas Health and Safety Code, Chapter 254 (relating to Freestanding Emergency Medical Care Facilities), and the rules in this chapter.

(b) HHSC may deny, suspend, or revoke a license or impose an administrative penalty for the following reasons:

(1) failure to comply with any provision of the Act;

(2) failure to comply with any provision of this chapter or any other applicable law;

(3) the facility, or any of its employees, performs an act or omission that causes actual harm or risk of harm to the health or safety of a patient;

(4) the facility, or any of its employees, materially alters any license issued by HHSC;

(5) failure to comply with minimum standards for licensure;

(6) failure to provide an adequate licensure application or renewal information;

(7) failure to comply with an order of the executive commissioner or another enforcement procedure under the Act;

(8) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights;

(9) the facility, or any of its employees, aids, commits, abets, or permits the commission of an illegal act;

(10) the facility, or any of its employees, commits fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC or required to be maintained by the facility pursuant to the Act and the provisions of this chapter;

(11) failure to timely pay an assessed administrative penalty as required by HHSC;

(12) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(13) failure to timely implement plans of corrections to deficiencies cited by HHSC within the dates designated in the plan of correction; or

(14) failure to comply with applicable requirements within a designated probation period.

(c) The denial, suspension, or revocation of a license by HHSC and the appeal from that action are governed by the procedures for a contested case hearing under Texas Government Code Chapter 2001 (the Administrative Procedure Act).

§509.102. Denial of a License.

HHSC may deny a license if the applicant:

(1) fails to provide timely and sufficient information regarding the application that HHSC requires; or

(2) has had the following actions taken against the applicant within the two-year period preceding the application:

(A) decertification or cancellation of its contract under the Medicare or Medicaid program in any state;

(B) federal Medicare or state Medicaid sanctions or penalties;

(C) unsatisfied federal, state, or local tax liens;

(D) unsatisfied final judgments;

(E) eviction involving any property or space used as a health care facility in any state;

(F) unresolved state Medicaid or federal Medicare audit exceptions;

(G) denial, suspension, or revocation of a license for any health care facility in any state;

(H) a court injunction prohibiting ownership or operation of any health care facility; and

(I) a documented history of reportable conduct under Texas Health and Safety Code Chapter 253 (relating to Employee Misconduct Registry).

§509.103. Suspension; Revocation.

(a) HHSC may suspend or revoke an existing valid license or disqualify a person from receiving a license because of a person's conviction of a felony or misdemeanor, if the crime directly relates to the duties and responsibilities of the ownership or operation of a health care facility.

(b) In determining whether a criminal conviction directly relates, HHSC shall consider the provisions of Texas Occupations Code Chapter 53, Subchapter B (relating to Ineligibility for License).

(c) The following crimes directly relate to the duties and responsibilities of the ownership or operation of a health care facility because these criminal offenses indicate an ability or a tendency for the person to be unable to own or operate a health care facility:

(1) a misdemeanor violation of the Act;

(2) a misdemeanor or felony involving moral turpitude;

(3) a conviction relating to deceptive business practices;

(4) a misdemeanor of practicing any health-related profession without a required license;

(5) a conviction under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(6) a misdemeanor or felony offense under the Texas Penal Code as follows:

(A) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this subsection;

(B) Title 5 concerning offenses against the person;

(C) Title 7 concerning offenses against property;

(D) Title 9 concerning offenses against public order and decency; or

(E) Title 10 concerning offenses against public health, safety, and morals; and

(7) other misdemeanors and felonies that indicate an inability or tendency for the person to be unable to own or operate a facility.

(d) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, the license shall be revoked.

§509.104. Emergency Suspension.

(a) HHSC may issue an emergency order to suspend a facility's license if HHSC has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety.

(b) An emergency suspension under this section is effective immediately without a hearing or notice to the license holder.

(c) On written request of the license holder, HHSC shall refer the matter to the State Office of Administrative Hearings, which will conduct a hearing not earlier than the 10th day or later than the 30th day after the date HHSC receives the hearing request to determine if the emergency suspension is to be continued, modified, or rescinded.

(d) A hearing and any appeal under this section are governed by HHSC rules for a contested case hearing and Texas Government Code, Chapter 2001 (the Administrative Procedure Act).

§509.105. Probation.

(a) If HHSC finds that a facility is in repeated noncompliance with the Act or this chapter but that the noncompliance does not endanger public health and safety, HHSC may place the facility on probation rather than denying, suspending, or revoking the facility's license.

(b) HHSC shall provide notice to the facility of the probation and of the violations not later than the 10th day before the date the probation period begins. The notice shall include the violations that resulted in placing the facility on probation.

(c) HHSC shall designate a period of not less than 30 days during which the facility remains under probation.

(d) During the probation period, the facility shall correct the violations and provide a written report that describes the corrective actions taken to HHSC for approval.

(e) HHSC may verify the corrective actions through an on-site inspection.

(f) HHSC may suspend or revoke the license of a facility that does not correct violations or that violates the Act or this chapter within the applicable probation period.

§509.106. Injunction.

Pursuant to Health and Safety Code §254.203, HHSC may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under the Act if HHSC finds that the violation creates an immediate threat to the health and safety of the patients of a facility or of the public.

§509.107. Criminal Offense.

Pursuant to Texas Health and Safety Code §254.204, a person commits a Class C misdemeanor if the person violates Texas Health and Safety Code §254.051 (relating to License Required). Each day of a continuing violation constitutes a separate offense.

§509.108. Administrative Penalty.

(a) HHSC may impose an administrative penalty on a person licensed under the Act who violates the Act, this chapter, or an order adopted under this chapter.

(b) The amount of the penalty may not exceed $1,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith efforts to come into compliance; and

(6) any other matter that justice may require.

(d) If HHSC initially determines that a violation occurred, HHSC shall give written notice of the report by certified mail to the person.

(e) The notice under subsection (e) of this section must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(f) Not later than 20 calendar days after the date the person receives the notice under subsection (e) of this section, the person in writing may:

(1) accept the determination and recommended penalty of HHSC; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, HHSC by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing, HHSC shall refer the matter to the State Office of Administrative Hearings (SOAH), which will set the hearing date. HHSC shall give written notice of the time and place of the hearing to the person. An administrative law judge with SOAH will conduct the hearing.

(i) The administrative law judge will make findings of fact and conclusions of law and issue to the executive commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(j) Based on the findings of fact, conclusions of law, and proposal for a decision, the executive commissioner by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(k) The notice of the order under subsection (k) of this section that HHSC sends to the person in accordance with Texas Government Code Chapter 2001 (the Administrative Procedure Act) must include a statement of the right of the person to judicial review of the order.

§509.109. Payment of Administrative Penalty; Judicial Review.

Not later than 30 days after the date an order imposing an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) pursuant to Texas Health and Safety Code §254.206, file a petition for judicial review of the executive commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

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

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER W. CONSUMER PROTECTION REQUIREMENTS CONSUMER BILL OF RIGHTS

28 TAC §5.9970, §5.9971

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.9970 and add new §5.9971, relating to the Consumer Bills of Rights for Personal Automobile Insurance (Auto Bill of Rights) and Homeowners, Dwelling, and Renters Insurance (Homeowners Bill of Rights). Insurance Code §501.156 requires the Office of Public Insurance Counsel (OPIC) to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance that TDI regulates.

EXPLANATION. TDI received petitions from OPIC requesting adoption of the Auto Bill of Rights and Homeowners Bill of Rights. Personal lines insurers must distribute the bills of rights to each policyholder on issuance of a new policy or on renewal if the updated bills of rights were not previously sent. Amending the current consumer bill of rights section and adopting a new section ensures that insurers distribute current consumer rights information to policyholders. The proposal moves the Homeowners Bill of Rights from §5.9970 to new §5.9971. The Auto Bill of Rights remains in §5.9970.

Amending the existing rule and adopting a new section to separately address the Auto and Homeowners Bills of Rights will give more flexibility to customize each bill of rights.

In addition, the proposed rules and bills of rights include nonsubstantive edits for improved clarity and style. The changes include reorganizing and rewriting the rules and bills of rights in plain language consistent with agency style to make them easier for consumers to understand.

Amended §5.9970. Section 5.9970 is amended to limit this section to only the Auto Bill of Rights. The caption of §5.9970 is revised accordingly. Subsection (a) is revised to remove text related to the Homeowners Bill of Rights, including the references to the Texas Windstorm Insurance Association and the Texas Fair Plan Association, neither of which write automobile insurance. Subsection (b) is updated to reflect that the rule applies to the 2021 version of the Auto Bill of Rights rather than the 2012 version.

The updated English and Spanish translation versions of the Auto Bill of Rights are proposed in subsection (b) as FIGURE 1: 28 TAC §5.9970(b) and FIGURE 2: 28 TAC §5.9970(b).

Current subsection (c) is divided into new subsections (c), (d), and (e) to make it easier to read and understand. The last sentence of existing subsection (c) is deleted because that sentence does not impose a requirement.

Current subsections (d) and (e), related to the Homeowners Bill of Rights, are deleted.

New §5.9971. New §5.9971 is proposed to specify requirements for the Homeowners Bill of Rights, moved from current §5.9970. The updated English and Spanish translation versions of the Homeowners Bill of Rights are proposed in subsection (b) as Figure 1: 28 TAC §5.9971(b) and Figure 2: 28 TAC §5.9971(b).

The proposed new English and Spanish translation versions of the Auto and Homeowners Bills of Rights contain changes from the previous versions due to legislative and regulatory actions that affected the rights of insurance consumers. These include:

- SB 112, 83rd Legislature, 2013, which required insurers to disclose deductibles on declarations pages;

- SB 698, 83rd Legislature, 2013, which added deadlines for refunds of unearned premium; and

- SB 417, 85th Legislature, 2017, which required insurers to give notice when they make material changes to insurance policies at renewal.

Each provision in the updated bills of rights is intended to inform consumers about their rights related to their insurance policies.

OPIC filed its original petition to adopt the Homeowners Bill of Rights on August 31, 2018. TDI posted the informal draft of the rule text and bill of rights on its website on May 15, 2019, to solicit comments from the public. TDI received eight comments. In response to these comments, and to make additional changes, OPIC submitted a series of amended petitions. The current petition, filed on October 8, 2020, is available on TDI's website.

OPIC submitted its original petition to adopt the Auto Bill of Rights on August 22, 2019. TDI posted the informal draft of the rule text and bill of rights on its website on March 30, 2020, to solicit comments from the public. TDI received two comments. In response, OPIC filed an amended petition on June 8, 2020. This current petition is available on TDI's website.

TDI and OPIC considered all comments made during the informal processes for both the Auto Bill of Rights and Homeowners Bill of Rights when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director, Property and Casualty Lines Office, has determined that for each year of the first five years the proposed amendment and new section are in effect, there will be no measurable fiscal impact on state and local governments due to enforcement or administration of this proposal.

Ms. Baker does not anticipate any measurable effect on local employment or the local economy due to enforcement or admin-

istration of this proposal, because the proposal simply updates documents insurers are already required to provide.

PUBLIC BENEFIT AND COST NOTE. For each of the first five years the proposed amendment and new section are in effect, Ms. Baker expects public benefits attributable to their enforcement and administration. The expected benefits include consumers receiving an accurate and understandable summary of their rights related to their auto and residential property insurance policies and facilitating public awareness of insurance consumer rights.

Ms. Baker expects that the proposed amendment and new section will impose an economic cost on persons required to comply. The cost will vary based on the lines of insurance and number of policyholders for each insurer.

According to data reported to TDI, there were almost 23,000,000 residential property and personal auto policies in force in Texas at the end of 2019. Insurance Code §501.156 and TDI rules require insurers to deliver the Homeowners Bill of Rights and Auto Bill of Rights to policyholders at the time the policy is issued or renewed. Because the proposed amendment and new section update existing documents already required to be provided with insurance policies, the amendment and new section do not impose additional duties regarding new policies. Insurers must provide policyholders with copies of the updated bills of rights at the first renewal after the updated bills of rights are effective.

Printing and paper costs. If the insurer and policyholder both consent to electronic delivery under Insurance Code Chapter 35, the insurer may send the updated bills of rights electronically, avoiding paper and printing costs. If an insurer prints paper copies of the bills of rights, TDI expects the cost to be between $0.06 and $0.08 per page for printing and paper. Both bills of rights are seven pages long.

An insurer's cost of complying with this requirement will depend on the number of renewals that the insurer provides and on the number of paper bills of rights the insurer sends. TDI expects that each insurer will have the information necessary to determine its individual cost, including the number of pages to be printed, in-house printing costs, and commercial printing costs.

TDI does not anticipate additional costs for mailing or electronic distribution, because the new bills of rights will be sent out in new and renewal packets that the insurer already sends.

Labor costs. TDI estimates that insurers may face administrative costs associated with updating the bills of rights in their systems.

While it is not feasible to determine the actual cost of any employees needed to comply with the requirement, TDI estimates that amending the bills of rights may require the following resources:

- between four and 20 hours of compliance officer staff time to update internal procedures so the revised bills of rights are distributed; and

- between four and 80 hours of computer programming staff time to prepare and test systems to begin distributing the revised bills of rights.

Staff costs may vary depending on the skill level required, the number of staff required, and the geographic location where work is done. The 2019 median hourly wage for these positions in Texas is:

- compliance officer, $35.65; and

- computer programmer, $40.86;

as reported by the Texas Wages and Employment Projections database, which is developed and maintained by the Texas Workforce Commission and located at www.texaswages.com/WDAWages.

Information on median wages in other states may be obtained directly from the federal Bureau of Labor Statistics website at www.bls.gov/oes/current/oes_nat.htm.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that this proposal may have an adverse economic effect on small or micro businesses. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses. The total cost to an insurer in providing the updated Homeowners Bill of Rights and Auto Bill of Rights to its policyholders is not wholly dependent on the size of the insurer. Instead, the cost depends on the insurer's number of current and future policyholders. TDI does not anticipate an impact on any rural communities because the requirement to distribute the bills of rights applies to insurers, not to rural communities.

In accordance with Government Code §2006.002(c-1), TDI considered the following alternatives to minimize any adverse impact on small or micro businesses while still accomplishing the proposal's objectives:

(1) TDI considered not proposing the new rules, but Insurance Code §501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates. The statute requires these bills of rights to be distributed upon issuance of a policy by insurers to all applicable policyholders. Updating the Auto Bill of Rights and Homeowners Bill of Rights is necessary to reflect legislative and regulatory actions that affect the rights of insurance policyholders despite any possible impact on small or micro businesses. To ensure compliance with the statutory requirements, TDI rejected this option.

(2) TDI also considered imposing different rules for small or micro businesses, but ultimately rejected this option for the same reason previously stated. The proposed amendment and new section are necessary to comply with statutes and rules that require all insurers issue the applicable bill of rights to policyholders on issuance of a new or renewal policy. These statutory requirements apply to all residential property and personal auto insurers, regardless of size, and cannot be waived or modified for small or micro businesses. Therefore, TDI rejected this option.

(3) Finally, TDI considered exempting small or micro businesses from the rule requirement, but ultimately rejected this option for the same reasons previously stated. The purpose of the consumer bills of rights is to notify each policyholder of their rights applicable to those personal lines of insurance. Insurance Code §501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance that TDI regulates. These statutory requirements apply to all residential and auto insurers, regardless of size, and cannot be waived or modified for small or micro businesses. Therefore, TDI rejected this option.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because publishing the bills of rights is necessary to implement Insurance Code §501.156. Section 501.156

requires OPIC to submit for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates.

The bills of rights were last updated in 2012. More recent legislation requires updating the bills of rights:

- SB 112, 83rd Legislature, 2013, requires insurers to disclose deductibles on declarations pages;

- SB 698, 83rd Legislature, 2013, adds deadlines for refunds of unearned premium; and

- SB 417, 85th Legislature, 2017, requires insurers to give notice when they make material changes to insurance policies at renewal.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years it is in effect, the proposed rule amendment and new section:

-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 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 or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. You may review copies of the most recent petitions and associated documents at www.tdi.texas.gov/rules/2020. If you would like to review the materials in person at the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701, please email ChiefClerk@tdi.texas.gov to arrange a time.

Submit any written comments on the proposal no later than 5:00 p.m., central time, on February 22, 2021. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, Mail Code 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. 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, Mail Code 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

STATUTORY AUTHORITY. TDI proposes amending §5.9970 and adding new §5.9971 under Insurance Code §§501.156, 2301.055, and 36.001.

Section 501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates.

Section 2301.055 grants the Commissioner the authority to adopt reasonable and necessary rules to implement regulation of insurance policy forms and endorsements for personal automobile insurance and residential property insurance.

Section 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. Sections 5.9970 and 5.9971 implement Insurance Code §§501.156, 2301.055, and 36.001.

§5.9970. Personal Automobile Insurance Consumer Bill of Rights. [Responsibility and Obligation of Insurers To Provide Copies of the Consumer Bills of Rights to Each Insured for Personal Automobile Insurance and for Homeowners, Dwelling and Renters Insurance.]

(a) For purposes of this section, "insurer" [insurer(s)] means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write personal automobile insurance [or residential property insurance] in this state. The term includes an affiliate, as described by Insurance Code §823.003(a) [of the Insurance Code], if that affiliate is authorized to write and is writing personal automobile insurance [or residential property insurance] in this state. [The term does not include the Texas Windstorm Insurance Association or the Texas Fair Plan Association.]

(b) The Texas Department of Insurance adopts the 2021 version of the ["]Consumer Bill of Rights-["] Personal Automobile Insurance (Auto Bill of Rights) [(BRPA - Revised 2012)], and the Spanish language translation, as developed and submitted by the Office of Public Insurance Counsel:
Figure 1: 28 TAC §5.9970(b)
[Figure 1: 28 TAC §5.9970(b)]
Figure 2: 28 TAC §5.9970(b)
[Figure 2: 28 TAC §5.9970(b)]

(c) All insurers writing personal automobile insurance policies must provide with each new policy of personal automobile insurance a copy of the 2021 version of the Auto Bill of Rights [BRPA - Revised 2012]. At the consumer's request, the insurer may provide an electronic copy of the Auto Bill of Rights [BRPA - Revised 2012] instead of a hard copy. The insurer must provide the Auto Bill of Rights [BRPA- Revised 2012] with each renewal notice for personal automobile insurance unless the insurer has previously provided the policyholder with the 2021 version of the Auto Bill of Rights [BRPA - Revised 2012]. [The BRPA - Revised 2012 must appear in no less than 10 point type and be on separate pages with no other text on those pages. The insurer must provide the Spanish language version of the BRPA - Revised 2012 to any consumer who requests it from the insurer. You may request a copy of the BRPA - Revised 2012 from the Texas Department of Insurance, Mail Code 104-1A, P.O. Box 149104, Austin, Texas 78714-9104 or from the Texas Department of Insurance website at www.tdi.texas.gov.]

(d) The Auto Bill of Rights must appear in no less than 10-point type and be on separate pages with no other text on those pages. [The Texas Department of Insurance adopts the "Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance" (BRHO - Revised 2012), and the Spanish language translation:]
[Figure 1: 28 TAC §5.9970(d)]
[Figure 2: 28 TAC §5.9970(d)]

(e) Insurers must provide the Spanish language version of the 2021 version of the Auto Bill of Rights to any consumer who requests it. [All insurers writing homeowners, renters, or dwelling insurance must provide with each new policy of any such insurance a copy of

~~the BRHO -- Revised 2012. At the consumer's request, the insurer may provide an electronic copy of the BRHO -- Revised 2012 instead of a hard copy. The insurer must provide the BRHO -- Revised 2012 with each renewal notice for any such insurance unless the insurer has previously provided the insured with the BRHO -- Revised 2012. The BRHO -- Revised 2012 must appear in no less than 10-point type and be on separate pages with no other text on those pages. The insurer must provide the Spanish language version of the BRHO -- Revised 2012 to any consumer who requests it from the insurer. You may request a copy of the BRHO -- Revised 2012 from the Texas Department of Insurance, Mail Code 104-1A, P.O. Box 149104, Austin, Texas 78714-9104 or from the Texas Department of Insurance website at .texas.gov.~~]

§5.9971. Homeowners, Dwelling, and Renters Insurance Consumer Bill of Rights.

(a) For purposes of this section, "insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance in this state. The term includes an affiliate, as described by Insurance Code §823.003(a), if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include the Texas Windstorm Insurance Association or the Texas Fair Plan Association.

(b) The Texas Department of Insurance adopts the 2021 version of the Consumer Bill of Rights - Homeowners, Dwelling, and Renters Insurance (Homeowners Bill of Rights), and the Spanish language translation, as developed and submitted by the Office of Public Insurance Counsel:
Figure 1: 28 TAC §5.9971(b)
Figure 2: 28 TAC §5.9971(b)

(c) All insurers writing homeowners, dwelling, or renters insurance must provide with each new policy of any such insurance a copy of the 2021 version of the Homeowners Bill of Rights. At the consumer's request, the insurer may provide an electronic copy of the Homeowners Bill of Rights instead of a hard copy. The insurer must provide the Homeowners Bill of Rights with each renewal notice for any such insurance unless the insurer has previously provided the policyholder with the 2021 version of the Homeowners Bill of Rights.

(d) The Homeowners Bill of Rights must appear in no less than 10-point type and be on separate pages with no other text on those pages.

(e) The insurer must provide the Spanish language version of the 2021 version of the Homeowners Bill of Rights - Revised 2021 to any consumer who requests it.

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

Filed with the Office of the Secretary of State on January 7, 2021.

TRD-202100106
Allison Eberhart
Deputy General Counsel
Texas Department of Insurance
Earliest possible date of adoption: February 21, 2021
For further information, please call: (512) 676-6584

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CHAPTER 34. STATE FIRE MARSHAL
SUBCHAPTER F. FIRE ALARM RULES

28 TAC §34.616

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §34.616, relating to fire detection sales, installation, and service standards. These amendments clarify the intent of the regulations, efficiently administer the respective statutes, and provide for the safety of regulated persons and their customers.

EXPLANATION. Chapter 6002 authorizes the State Fire Marshal's Office to safeguard lives and property by regulating the planning, certifying, leasing, selling, servicing, installing, monitoring, and maintaining of fire detection and fire alarm devices and systems. The proposed amendments clarify existing rules to eliminate confusion some regulated industry and local authorities have with respect to fire protection planning, installation, and servicing standards.

The proposed amendments to §34.616 clarify that as long as all related tasks are done by licensed parties, the fire protection licensee responsible for planning the fire protection system can be different from the licensee installing the system. In addition, the amendments allow local governments more flexibility in determining the standard required for planning, installing, and servicing fire protection services by allowing the use of standards previously adopted by the local political jurisdiction as well as the currently adopted standard found in §34.607. The proposed amendments also correct punctuation errors and include nonsubstantive editorial changes for readability.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Ernest McCloud, assistant state fire marshal, 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 or local governments as a result of enforcing or administering the sections.

Mr. McCloud does not anticipate any measurable effect on local employment or local economies 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, Mr. McCloud expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Insurance Code Chapter 6002 and make existing rules easier to understand, apply, and process.

Mr. McCloud expects that the proposed amendments will not increase the cost of compliance with Insurance Code Chapter 6002 because the amendments clarify the department's longstanding interpretation of existing rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on 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 possible cost on regulated persons.

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 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 February 22, 2021. 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 to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m. Central time, on February 22, 2021. If TDI has a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §34.616 under Government Code §417.005 and Insurance Code §§6002.051, 6002.052, and 36.001.

Government Code §417.005 states that the Commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the Commissioner.

Insurance Code §6002.051(a) specifies that the department will administer Chapter 6002. Insurance Code §6002.051(b) specifies that the Commissioner may adopt rules as necessary to administer Chapter 6002, including rules the Commissioner considers necessary to administer Chapter 6002 through the state fire marshal.

Insurance Code §6002.052(b) specifies that rules adopted under §6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 34.616 implements Insurance Code §6002.051 and §6002.052.

§34.616. Sales, Installation, and Service.

(a) Residential alarm (single station).

(1) Registered firms may employ persons exempt from the licensing provisions of Insurance Code §6002.155(10) to sell, install, and service residential, single station alarms. Exempted persons must be under the supervision of a residential fire alarm superintendent (single station), residential fire alarm superintendent, or fire alarm planning superintendent.

(2) Each registered firm that employs persons exempt from licensing provisions of Insurance Code §6002.155(10) is required to maintain documentation to include lesson plans and annual test results demonstrating competency of those employees regarding the provisions of Insurance Code Chapter 6002, adopted standards, and this subchapter applicable to single station devices.

(b) Fire detection and fire alarm devices or systems other than residential single station.

(1) The installation of all fire detection and fire alarm devices or systems, including monitoring equipment subject to Insurance Code Chapter 6002 must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm technician, residential fire alarm superintendent, or a fire alarm planning superintendent for the work permitted by the license. The licensee responsible for the planning of all fire detection and fire alarm devices or systems, including monitoring equipment subject to Insurance Code Chapter 6002, must be licensed under the Alarm Certificate of Registration (ACR) [~~ACR~~] number of the [~~primary~~] registered firm responsible for the planning. The certifying licensee, who is [~~must be~~] licensed under the ACR number of the [~~primary~~] registered firm responsible for the installation, [~~and~~] must be present for the final acceptance test prior to certification. The registered firm responsible for the planning of the fire devices or system can be different from the firm responsible for the installation.

(2) The maintenance or servicing of all fire detection and fire alarm devices or systems must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm technician, residential fire alarm superintendent, or a fire alarm planning superintendent, for the work permitted by the license. The licensee attaching a label must be licensed under the ACR number of the primary registered firm.

(3) If the installation or servicing of a fire alarm system also includes installation or servicing of any part of a fire protection sprinkler system or a fire extinguisher system, the licensing requirements of Insurance Code Chapters 6001 and 6003 must be satisfied, as appropriate.

(4) The planning, installation, and servicing of fire detection or fire alarm devices or systems, including monitoring equipment, must be performed according to standards adopted in §34.607 of this title (relating to Adopted Standards) except when the planning and installation complies with an [~~a more recent~~] edition of the standard that has been previously adopted by the political subdivision in which the system is installed.

(5) Fire alarm system equipment replaced in the same location with the same or similar electrical and functional characteristics and listed to be compatible with the existing equipment, as determined by a fire alarm planning superintendent, may be considered a repair. The equipment replaced must comply with the currently adopted standards but the entire system is not automatically required to be modified to meet the applicable adopted code. The local authority having jurisdiction (AHJ) [~~AHJ~~] must be consulted to determine whether to update

the entire system to comply with the current code and if plans or a permit is required prior to making the repair.

(6) On request of the owner of the fire alarm system, a registered firm must provide all passwords, including those for the site-specific software, but the registered firm may refrain from providing that information until the system owner signs a liability waiver provided by the registered firm.

(c) Monitoring requirements.

(1) A registered firm may not monitor a fire alarm system located in the State of Texas for an unregistered firm.

(2) A registered firm may not connect a fire alarm system to a monitoring service unless:

(A) the monitoring service is registered under Insurance Code Chapter 6002 or is exempt from the licensing requirements of that chapter; and

(B) the monitoring equipment being used is in compliance with Insurance Code §6002.251.

(3) A registered firm must employ at least one technician licensee at each central station location. Each dispatcher at the central station is not required to be a fire alarm technician licensee.

(4) A registered firm subcontracting monitoring services to another registered firm must advise the monitoring services subscriber of the identity and location of the registered firm actually providing the services unless the registered firm's contract with the subscriber contains a clause giving the registered firm the right, at the registered firm's sole discretion, to subcontract any or all of the work or service.

(5) A registered monitoring firm[,] reporting an alarm or supervisory signal to a municipal or county emergency services center must provide, at a minimum, the type of alarm, address of alarm, name of subscriber, dispatcher's identification, and call-back phone number. If requested, the firm must also provide the name, registration number, and call-back phone number of the firm contracted with the subscriber to provide monitoring service if other than the monitoring station.

(6) If the monitoring service provided under this subchapter is discontinued before the end of the contract with the subscriber, the monitoring firm, central station, or service provider must notify the owner or owner's representative of the monitored property and the local AHJ a minimum of seven days before terminating the monitoring service. If the monitored property is a one-or two-family dwelling, notification of the local AHJ is not required.

(d) Record keeping. The firm must keep complete records of all service, maintenance, and testing on the system for a minimum of two years. The records must be available for examination by the state fire marshal or the state fire marshal's representative.

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

Filed with the Office of the Secretary of State on January 8, 2021.

TRD-202100124
Allison Eberhart
Deputy General Counsel
Texas Department of Insurance
Earliest possible date of adoption: February 21, 2021
For further information, please call: (512) 676-6584

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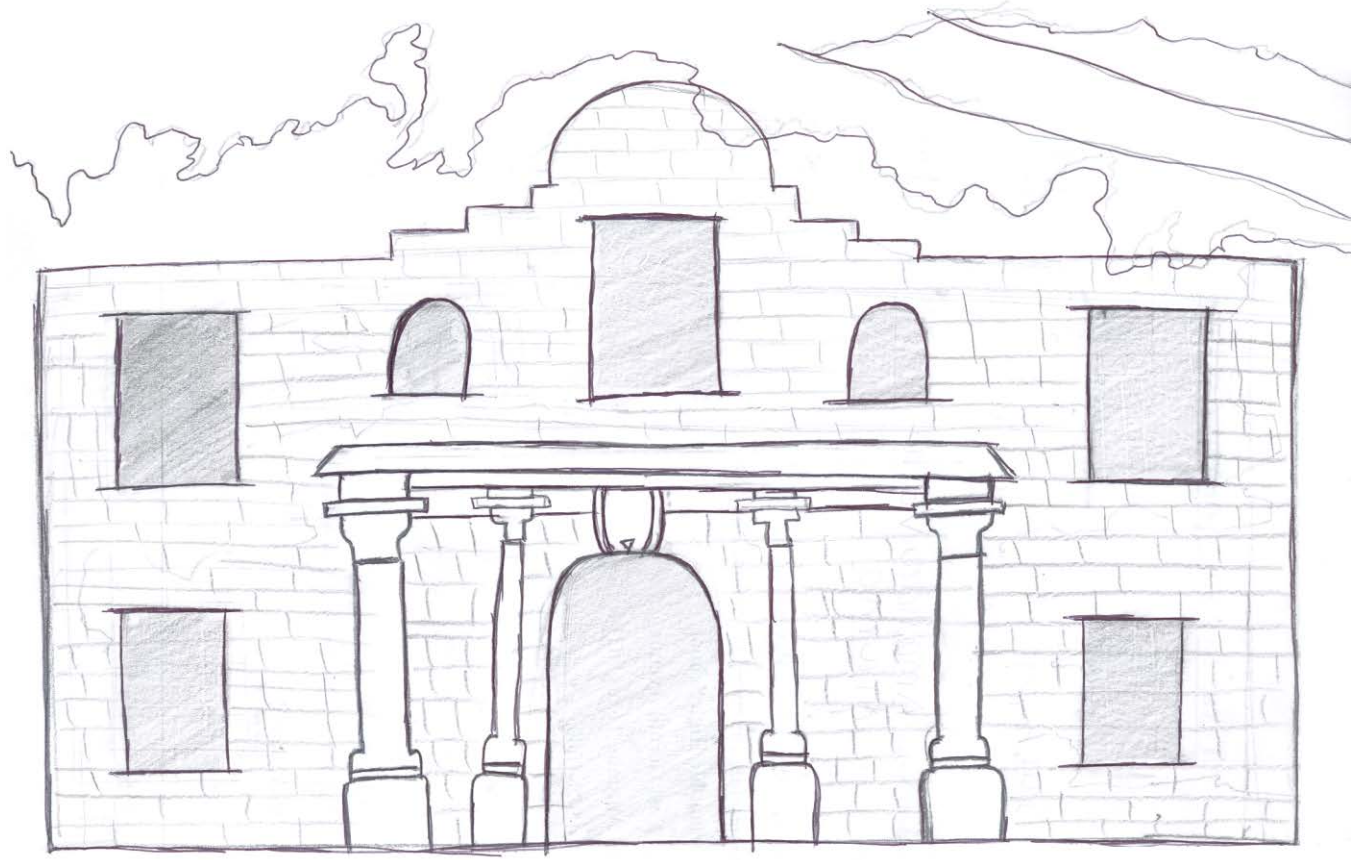

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 21. HISTORY PROGRAMS

SUBCHAPTER B. OFFICIAL TEXAS HISTORICAL MARKER PROGRAM

13 TAC §21.13

The Texas Historical Commission withdraws proposed new §21.13, which appeared in the November 13, 2020, issue of the *Texas Register* (45 TexReg 8086).

Filed with the Office of the Secretary of State on January 5, 2021.

TRD-202100061
Mark Wolfe
Executive Director
Texas Historical Commission
Effective date: January 5, 2021
For further information, please call: (512) 463-6100

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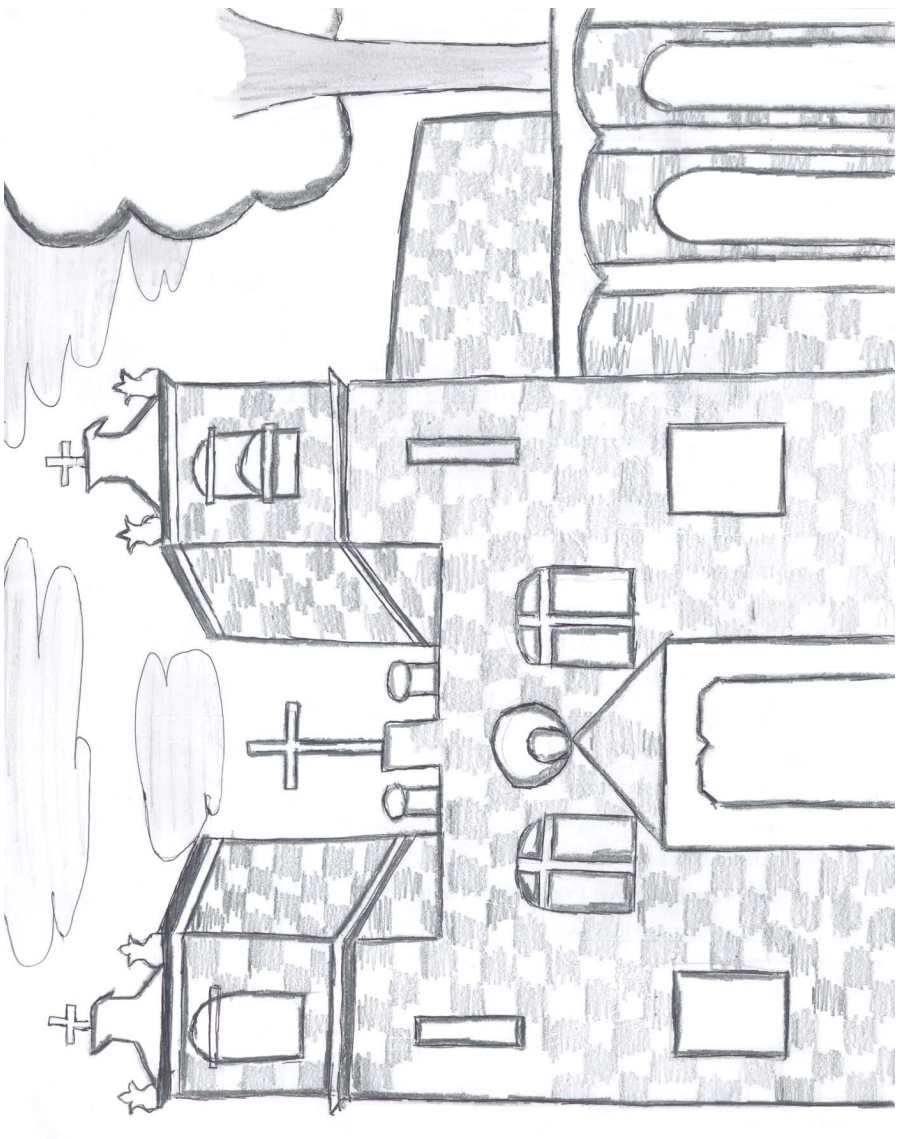

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.7

Introduction. The Texas Board of Nursing (Board) adopts amendments to §217.7, relating to Change of Name and/or Address, without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8701). The rule will not be republished.

Reasoned Justification. On June 15, 2020, the Board launched the Texas Nurse Portal. The Texas Nurse Portal is a paperless, online system that allows individuals to apply for nurse licensure by examination, endorsement, or renewal. In an effort to continue moving the Board's work flow to a paperless system, the adopted amendments require all name and address changes to be made online through the Texas Nurse Portal.

How the Section Will Function. Adopted §217.7(a) requires a nurse or applicant to notify the Board within ten days of a change of name by submitting a legal document reflecting the name change in the Texas Nurse Portal accessible through the Board's website.

Adopted §217.7(b) requires a nurse or applicant to notify the Board within ten days of a change of address by submitting the new address in the Texas Nurse Portal accessible through the Board's website.

Summary of Comments Received. The Board did not receive any comments on the proposal.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2021.

TRD-202100103

Jena Abel
Deputy General Counsel
Texas Board of Nursing
Effective date: January 27, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 228-1862

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.15

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 10, 2020, adopted an amendment to §53.15, concerning Miscellaneous Fisheries and Wildlife Licenses and Permits. The amendment is adopted with changes to the proposed text as published in the September 25, 2020, issue of the *Texas Register* (45 TexReg 6707). The rule will be republished.

The amendment reorganizes the existing fee structure for controlled exotic species permits authorizing the possession of harmful or potentially harmful fish, shellfish, and aquatic plants and establishes fees for proposed, multi-year renewals of commercial aquaculture permits. The amendment is largely nonsubstantive (i.e., most current fee amounts would not be changed except for commercial aquaculture permits to account for the need for more frequent facility inspections).

The amendment establishes the fee structure and amounts for the issuance of multi-year permits for controlled exotic permits issued for commercial aquaculture. Current rules provide for a one-year period of validity for exotic species permits with the possibility of annual renewal thereafter. Under the current rules, the initial fee for permit issuance is $263, which consists of a $27 administrative fee and a one-time facility inspection fee of $236. In another rulemaking published elsewhere in this issue of the *Texas Register,* the department adopts new rules governing permits to possess controlled exotic species. Among other things, the new rules require all commercial aquaculture facilities to be inspected at least once every five years but also allow for the issuance of multi-year permit renewals (three years or five years)

to commercial aquaculture permit holders who are in good standing and have no history of violations for the preceding period of the same duration as the renewal period. The amendment to §53.15 updates the fee for a one-year renewal to $74, establishes a fee for a three-year renewal of a commercial aquaculture permit of $168, and establishes a fee for a five-year renewal of a commercial aquaculture permit of $263. These fees represent, in each case, $27 for the one-time administrative fee, plus a pro-rated annual inspection fee ($236 divided by the five-year interval period for inspections). Totals for the renewal fees for the multi-year permits were rounded to the nearest whole dollar amounts.

Changes to the rule between publication of the proposal and publication of the adopted rule text include restoration of subsection (h), which was omitted from the proposal, as well as non-substantive changes to make the rule style-consistent.

The department received one comment opposing adoption of the rule as proposed. The commenter stated that the new fee structure is unfair because it includes an inspection fee when inspections will be less frequent and therefore amounts to a doubling of fees. The department disagrees with the comment and responds that the rule as adopted neither doubles fees nor reduces the frequency of an activity for which a fee is required under current rule. Rather, the amendment pro-rates inspection fees according to the need for inspection and, in practice, increases the frequency of inspections. No changes were made as a result of the comment.

The department received one comment supporting adoption of the rule as proposed.

The amendment is adopted under the authority of Parks and Wildlife Code, §66.007, which authorizes the department to make rules necessary to authorize the import, possession, sale, or introduction of harmful or potentially harmful exotic fish.

§53.15. Miscellaneous Fisheries and Wildlife Licenses and Permits.

(a) Trap, transport and transplant permit application fees:

(1) nonrefundable application processing fee--$750 per release site; and

(2) nonrefundable application processing fee for amendment to existing permit--$30. If the amendment includes additional release sites, the fee prescribed by paragraph (1) of this subsection shall be imposed for each additional release site.

(b) Game bird and animal breeding licenses:

(1) game animal breeder's--$79;

(2) class 1 commercial game bird breeder's--$189; and

(3) class 2 commercial game bird breeder's--$27.

(c) Commercial nongame permits:

(1) resident nongame permit--$19;

(2) nonresident nongame permit--$63;

(3) resident nongame dealer permit--$63;

(4) nonresident nongame dealer permit--$252;

(5) nongame species sales permit--$210; and

(6) nongame species sales permit renewal--$210.

(d) Zoological collection permit application--$158;

(e) Scientific research permit application--$53;

(f) Educational display permit application--$53;

(g) Controlled Exotic Species (fish, shellfish and aquatic plants):

(1) water spinach culture permit--$263;

(2) exotic fish or shellfish commercial aquaculture permit:

(A) Initial issuance--$263;

(B) One-year renewal--$74;

(C) Three-year renewal--$168; and

(D) Five-year renewal--$263.

(3) triploid grass carp permit fee--$16, plus $2 per triploid grass carp requested (the $2 per fish fee is refundable if the permit application is denied);

(4) exotic species interstate transit permit:

(A) single-use--$27;

(B) one-year authorization--$105.

(5) research, biological control production, zoological display, and limited special purpose permits (other than for triploid grass carp); initial, renewal, or amendment requiring facility inspection--$263; and

(6) research, biological control production, zoological display, and limited special purpose permits (other than for triploid grass carp); initial, renewal or amendment not requiring facility inspection--$27.

(h) Miscellaneous fees:

(1) commercial plant permit--$50;

(2) aerial management permit--$210;

(3) broodstock permit application--$25;

(4) permit to introduce fish, shellfish, or aquatic plants--no fee;

(5) offshore aquaculture permit or renewal--$1,575;

(6) oyster lease application--$200;

(7) oyster lease renewal/transfer/sale--$200; and

(8) double-crested cormorant control permit--$13.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2021.

TRD-202100110
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: January 27, 2021
Proposal publication date: September 25, 2020
For further information, please call: (512) 389-4775

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CHAPTER 57. FISHERIES

SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 10, 2020 adopted the repeal of 31 TAC §§57.112 - 57.137, an amendment to §57.111, and new §§57.112 - 57.128, concerning Harmful or Potentially Harmful Fish, Shellfish and Aquatic Plants. Section 57.125 is adopted with changes to the proposed text as published in the September 25, 2020, issue of the *Texas Register* (45 TexReg 6714). Sections 57.111 - 57.124 and 57.126 - 57.128 are adopted without change and will not be republished.

The change to §57.114, concerning Controlled Exotic Species Permits, inserts qualifying language in subsection (f)(1) to clarify that the provisions include limited special purpose permits for private pond stocking. The intent of the provision is established contextually by the applicability of other provisions; the change makes that applicability unambiguous.

The change to §57.125, concerning Reporting, Recordkeeping, and Notification Requirements adds language to subsection (b)(3)(B) to clarify that the exemption for reporting requirements by commercial aquaculture facility permit holders applies only to tilapia and not to any other species held under the permit. The change also alters the reporting deadline established in subsection (b)(2). The deadline as published was January 30. It should have been January 31. The changes are nonsubstantive.

The repeals, amendment and new sections are intended to reorganize to enhance readability by making location of the applicable rules more straightforward, updating current rules, and providing additional flexibility where possible to the regulated community while providing for the protection of native organisms and ecosystem from the potential threats posed by harmful and potentially harmful exotic species.

The amendment of §57.111, concerning Definitions, consists of several actions. The amendment eliminates the definitions of "aquaculturist or fish farmer" and "cultured species." The terms are not used in the new rules.

The amendment also eliminates the definitions of "harmful or potentially harmful exotic fish," "harmful or potentially harmful exotic shellfish," and "harmful or potentially harmful exotic plants." The current definitions are not actual definitions, but lists of organisms to which the provisions of the subchapter apply and more properly belong in the body of the rules rather than the section devoted to definitions.

The amendment also eliminates the definition of "immediately" because the department has determined that the common and ordinary meaning of the word is sufficient for the purposes of the new rules.

The amendment also eliminates the definition of "operator" because the word appears only once in the new rules and the department has determined that the common and ordinary meaning of the word is sufficient.

The amendment also eliminates the definition of "place of business" because the definition isn't useful in the context of the new rules.

The amendment also eliminates the definition of "private facility." The term is not used in the new rules.

Similarly, the amendment also eliminates the definition of "private facility effluent" because it is not used in the new rules.

The amendment also eliminates the definition of "public aquarium." The new rules do not require facilities applying for controlled exotic species permits for zoological display to have Association of Zoos and Aquariums (AZA) accreditation to be eligible for a permit.

The amendment adds new paragraph (1) to define "active partner" as "a governmental, quasi-governmental, or non-governmental organization or other entity that is currently engaged in department-coordinated efforts to monitor and/or manage controlled exotic species in Texas authorized by a letter of approval from the Director of the Inland Fisheries Division or Coastal Fisheries Division (or their designee) of the Texas Parks and Wildlife Department, as appropriate." This definition is needed to clearly specify eligibility for such approval with regards to provisions in new §57.113(c) and (m) that are intended to facilitate partnerships that support the mission of the department.

The amendment adds new paragraph (2) to define "agent" as "a person designated to conduct activities on behalf of any person or permit holder who is authorized by a controlled exotic species permit or other provision of this subchapter to conduct those activities. For the purposes of this subchapter, the term "permit holder" includes their agent. The definition is necessary to clarify the meaning of this term and specify that authorizations under the new rules are also applicable to an agent.

The amendment redefines "aquaculture" to reference, rather than repeat, the meaning of this term as defined in the Agriculture Code (§134.001(4)).

The amendment adds new paragraph (5) to define "biological control agent" as "a natural enemy or predator of a plant or animal that can be used to control the growth, spread, or deleterious impact of that plant or animal." This definition is needed to clarify the intent of new §57.113(d), which authorizes the production and sale of biological control agents under a controlled exotic species permit to support efforts to manage controlled exotic species on public and private waters.

The amendment amends the current definition of "Clinical Analysis Checklist" to clarify that the referenced document applies to shrimp.

The amendment adds new paragraph (8) to define "common carrier" as "a person or entity that is in the business of shipping goods or products and not a party to a transaction under a permit issued under this subchapter." Current rules (§57.115(3)) stipulate that such transport is limited to a "commercial shipper." This definition and concomitant changes in regulatory terminology from "commercial shipper" to the widely recognized, broader term "common carrier" is needed to ensure that department rules do not interfere with shipping businesses that transport controlled exotic species.

The amendment adds new paragraph (9) to define "controlled exotic species" as "any species listed in §57.112 of this title (relating to Exotic Harmful or Potentially Harmful Fish, Shellfish, and Aquatic Plants)," for reasons discussed earlier in this preamble.

The amendment adds new paragraph (10) to define "Controlled Exotic Species Permit" as "any permit issued under this subchapter that authorizes the import, propagation, possession, purchase, sale, and/or transport of a controlled exotic species,"

which is necessary to clarify the ambit of the meaning of that term.

The amendment adds new paragraph (11) to define "conveyance" as "any means of transporting persons, goods, or equipment on the water," which is necessary to provide an unambiguous meaning for the term as it is used in the subchapter.

The amendment eliminates the definition of "gutted" because the common and ordinary meaning of the word is sufficient for the purposes of the subchapter.

The amendment adds new paragraph (16) to define "disease inspector" as "an employee of the Texas Parks and Wildlife Department who is trained to perform clinical analysis of shrimp disease." The current definition of "certified inspector" refers to "a department employee who has completed a department-approved course in clinical analysis of shellfish." The department has determined that a more generic definition is necessary to enable the department to task additional human resources to inspection duties in order to expedite permit issuance and monitoring activities while ensuring that such personnel are properly trained.

The amendment adds new paragraph (17) to define "disease specialist" as "a third-party person approved by the department that possesses the education and experience to identify shellfish disease, such as a degree in veterinary medicine or a Ph.D. specializing in shellfish disease." The new definition is needed to expand the limited pool of qualified shrimp disease specialists available to conduct analyses of exotic shrimp aquaculture required by the new rules.

The amendment adds new paragraph (18) to define "dock or pier" as "a structure built over and/or floating on water that is used to provide access to water and/or for the mooring of boats." This definition is necessary to provide a precise explanation of the meaning of the term as it is employed in new §57.113.

The amendment adds new paragraph (19) to define "emergency" as "a situation or event beyond the control of any person, including but not limited to a natural disaster, power outage, or fire." The new definition is needed to create a specialized meaning of the term for purposes of identifying specific situations that trigger actions required by the new rules to be performed by a permit holder.

The amendment adds new paragraph (20) to rename "harmful or potentially harmful exotic species exclusion zone" as "exotic shrimp exclusion zone," which is necessary to reflect the fact that, as used in the new rules, the term only apply to exotic shrimp.

The amendment alters the current definition of "exotic species" to be more technically accurate. The current definition refers to organisms "not normally found in the waters of the state," which is scientifically inaccurate. Therefore, the amendment refers to "any aquatic plant, fish, or shellfish nonindigenous to this state."

The amendment adds new paragraph (22) to replace the term "aquaculture facility" with the term "facility" and define that term as "infrastructure, including drainage structures, at a location where controlled exotic species are possessed, propagated, cultured, or sold under a controlled exotic species permit, excluding private waters permitted for triploid grass carp stocking in accordance with §57.116 of this title (relating to Special Provisions--Triploid Grass Carp)." The amendment clarifies that ditches not used for drainage of aquaculture ponds or tanks are not considered part of a permitted facility, that transport is not an activity that takes place at the facility, and that private ponds permitted for triploid grass carp stocking are not subject to the facility requirements of the new rules.

The amendment adds new paragraph (23) to replace the term "aquaculture complex" with the term "facility complex" and define that term as "a group of two or more facilities located at a common site and sharing water diversion or drainage structures." The intent of the new definition is to remove an ambiguity that could be interpreted to mean that each facility within a complex must be separately owned.

The amendment adds new paragraph (24) to define "gill-cutting" as "cutting through the base of the gills on the underside of the fish." The new definition is necessary to provide an explicit meaning for an additional method of killing controlled exotic fish that be allowable under the new rules.

The amendment alters the definitions of "nauplius" and "postlarva" to include the plurals of those terms as well as a reference to the phylum to which the definition applies, which is necessary for purposes of precision.

The amendment redefines "private pond" as "a pond or lake capable of holding controlled exotic species of tilapia and/or triploid grass carp in confinement wholly within private land for non-commercial purposes." The amendment is necessary to clarify the species to which the term applies and that ponds used for the purpose of commercial aquaculture are not private ponds for the purposes of the new rules.

The amendment also changes the definition of "public water" to "public waters" and adds a citation to the statutory definition for that term.

The amendment also alters the definition for "quarantine condition" to more precisely communicate that the term means the physical separation of affected stock from other stock, fish or shellfish, or water of the state, which is necessary to prevent misunderstandings that could lead to adverse ecological impacts.

The amendment adds new paragraph (30) to define "recirculating aquaculture system" as "a system for culturing fish that treats or reuses all, or a major portion of the water and is designed for no direct offsite discharge of water." The new definition is needed because the new rules allow persons to hold controlled exotic species of tilapia without a permit and the department believes that such operations should be reasonably biosecure.

The amendment adds new paragraph (32) to define "tilapia and triploid Grass Carp regulatory zones" as "geographic conservation priority zones identified by the department where special provisions apply" and lists "conservation zone" and "stocking zone" designations for each county in Texas. This definition is needed for the purposes of ease of understanding, compliance with, and enforcement of the new rules.

The amendment revises current §57.111(32) to refer only to "Triploid Grass Carp;" definition of triploid black carp is no longer necessary under the new rules.

The amendment also revises the current definitions of "waste" and "water in the state" to make legal citations consistent with prevailing conventions.

Finally, the amendment alters the definition of "wastewater treatment facility" to clarify that the term includes "associated infrastructure, including drainage structures," in order to eliminate any ambiguity as to infrastructure subject to regulation under the subchapter.

New §57.112, concerning Exotic Harmful or Potentially Harmful Fish, Shellfish, and Aquatic Plants, identifies the species of fish, shellfish, and aquatic plants to which the new rules apply and provides for the applicability of the new rules to organisms in instances where taxonomical nomenclature for a species has changed as a result of scientific consensus.

New §57.112(a) provides that, with respect to any given species, the new rules apply to any hybrid, subspecies, eggs, juveniles, seeds, or reproductive or regenerative parts of that species, which is necessary to specifically delineate the applicability of the new rules to organisms in their various life stages and hybrids. Similarly, new subsection (b) provides that scientific reclassification or change in nomenclature of taxa at any level in taxonomic hierarchy not, in and of itself, result in removal from the list of exotic harmful or potentially harmful species in this section. From time to time, scientific consensus regarding biological classification of organisms results in reclassification based on new information. Because the process of amending the list of species in the rules requires commission rule action under the Administrative Procedure Act, it is time consuming. The department believes it should be clear that rules apply to specific organisms, regardless of changes to the taxonomic identity of that organism. Finally, new subsection (c) consists of the fish, shellfish, and aquatic plants currently designated by the department as harmful or potentially harmful, which are being relocated from current §57.111, concerning Definitions, for reasons discussed previously in this preamble, with the addition of new species as follows.

The new rule designates the stone moroko *(Pseudorasbora parva)* as a harmful or potentially harmful exotic fish. The stone moroko is currently listed as an injurious wildlife species under the federal Lacey Act. This species is known to prey upon native fishes and has been known to contribute to rapid declines and even localized extinctions of some minnows as well as serving as a fish disease and parasite vector. Although this species has not yet been documented in the U.S., it is considered to have potential to be introduced into the U.S. as an aquaculture or ornamental fish shipment contaminant "an introduction pathway documented elsewhere" and then spread to new areas. If introduced in Texas, climate match analysis suggests this species has a high potential for survival in much of the state (i.e., climate match ~7 out of 10).

The department also designates the Amur sleeper *(Perccottus glenii)* as a harmful or potentially harmful exotic fish. The Amur sleeper is currently listed as an injurious wildlife species under the Lacey Act. This species is a fast-growing, voracious predator with high reproductive potential. It is known to prey upon many aquatic species and contribute to declines and displacement of amphibians and fishes--particularly in small water bodies where it may replace them altogether. Although this species has not yet been documented in the U.S., it is considered highly likely to be accidentally transported internationally. If introduced in Texas, climate match analysis suggests this species has an intermediatepotential for survival in areas of the state (i.e., climate match ~5 out of 10), primarily in lakes, and it is highly adaptable to new environments.

The department also designates the European perch (also called redfin; *Perca fluviatilis)* as a "harmful or potentially harmful exotic fish." The European perch is currently listed as an injurious wildlife species under the Lacey Act. This species is a habitat generalist, thriving in habitats from streams to lakes and brackish waters and can survive a wide range of physicochemical conditions (e.g., oxygen, salinity, temperature). It poses a significant threat as a known host for three fish diseases reportable to the World Organisation for Animal Health, including epizootic haematopoietic necrosis virus, which can decimate native fish populations. This species has not yet been documented in the U.S., and its potential to be introduced into the U.S. is not well-known. It has been intentionally introduced in numerous other countries "legally or illegally" as a sport fish with widespread documentation of detrimental impacts on native fisheries. If introduced in Texas, climate match analysis suggests this species has a high potential for survival in much of the state (i.e., climate match 6-7 out of 10).

The department designates the Wels catfish *(Silurus glanis)* as a "harmful or potentially harmful exotic fish." This species is currently listed as an injurious wildlife species under the Lacey Act. This species is a voracious predator that can grow to over 16 feet in length and poses a significant risk to native species, particularly bottom-dwelling species including other catfishes and mussels. It poses a significant threat as a known host for a fish disease reportable to the World Organisation for Animal Health, spring viraemia of carp" which affect not only carp but also numerous other fish species including native catfish. Although this species has not yet been documented in the U.S., the Wels catfish has become somewhat notorious as a "monster fish" and is considered to have potential to be introduced into the U.S. illegally via the underground pet trade. Elsewhere outside the U.S., this species has been intentionally introduced and spread as a sport fish "legally and illegally." If introduced in Texas, climate match analysis suggests this species has a moderate potential for survival in much of the state (i.e., climate match 5-6 out of 10).

The department designates mud snails of the family Hydrobiidae as "harmful or potentially harmful exotic shellfish." This family includes highly invasive species such as the New Zealand mudsnail, *Potamopyrgus antipodarum.* This species is known to attain extremely high-density populations in excess of 300,000 snails per square meter and has potential to foul and impact facilities drawing water from infested lakes. This species is currently found in most western states "including nearby northern New Mexico and Colorado" as well as the Great Lakes region and several northeastern states. Potential for spread into Texas from adjacent states is high, particularly on boats, waders, and other equipment used in infested waters. If introduced in Texas, climate match analysis suggests this species has a moderately high potential for survival in much of the state (i.e., climate match 6-7 out of 10) and could become established and spread within the state.

The department designates the golden mussel, *Limnoperna fortunei,* as a "harmful or potentially harmful exotic shellfish." The negative impacts of this species are highly similar to those of the invasive dreissenid mussels "the zebra mussel and quagga mussel. These invasive mussels infest and damage water supply, hydroelectric, and other infrastructure, alter ecosystem food webs, and cover lake beaches and other colonized hard surfaces with razor-sharp shells. Although this species has not yet been documented in the U.S., it is considered highly likely to be introduced into the U.S. via ballast water of large, oceangoing ships "the same introduction pathway that is believed to be responsible for dreissenids invasions. If introduced in Texas, climate match analysis suggests this species has a high potential for survival in much of the state (i.e., climate match 6 - 7 out of 10) although, like dreissenids, calcium availability reduce the likelihood of invasion of East Texas lakes. Populations have been

documented elsewhere in waters with temperatures of 95 degrees Fahrenheit, suggesting that this species has greater potential than dreissenids to survive in power plant cooling lakes and impact these facilities.

The department designates crested floating heart, *Nymphoides cristata,* and yellow floating heart, *N. peltata,* as "harmful or potentially harmful exotic plants." Crested floating heart was first found in Texas in 2008 and has since formed infestations in Caddo Lake, Lake Conroe, Lake Athens, and the Lower Neches Valley Authority canals. Yellow floating heart was first detected in Texas in Moss Lake in 2010 and is also found on the Louisiana side of Toledo Bend Reservoir where there is high potential for eventual spread into Texas waters. These exotic floating hearts are rooted in the lake substrate with floating leaves and can form large, dense infestations that impede access for boating and other aquatic recreation. Management of these species is especially difficult due to their growth habit and, as with any invasive aquatic plant, can be costly. Regulation of these species as "harmful or potentially harmful" is needed to prevent transport and introduction into new water bodies, creating new infestations.

New §57.113, concerning General Provisions and Exceptions, sets forth numerous provisions generally applicable to the new rules and enumerate specific exceptions to the new rules.

New §57.113(a) establishes that nothing in the subchapter is to be construed to relieve any person of the obligation to comply with any applicable provision of local, state, or federal law. Other governmental entities have various legal authorities that impinge on the department's authority to regulate the possession and movement of certain fish, shellfish, and aquatic plants. The department wishes to be abundantly clear that a rehabilitation permit does not obviate any person's legal obligation to comply with such laws, when applicable.

New §57.113(b) recapitulates the statutory provisions of Parks and Wildlife Code, §66.007, which prohibits the importation, possession, sale, or placement into the public water of this state of exotic harmful or potentially harmful fish or shellfish except as authorized by rule or permit issued by the department, and §66.0071, which prohibits the importation, possession, sale, or placement into the public water of this state of aquatic plants designated by the department as harmful or potential harmful except as authorized by rule or permit issued by the department. The new subsection further prohibits the export, purchase, propagation, and culture of species of fish, shellfish, and aquatic plants designated by the department as harmful or potentially harmful species, which is necessary to clearly describe the types of activities for which a permit is required. The new subsection also prohibits the take or possession of a live grass carp from public water where grass carp have been introduced under a permit issued by the department, unless the department has specifically authorized removal or the permit is no longer in effect, which is a provision of current rule §57.112(b)(2).

New §57.113(c) establishes the eligibility requirements and procedures for seeking "active partner" status. Under the new rules, active partner status exempts an entity engaged in department-coordinated efforts to monitor and/or manage controlled exotic species from the requirement to obtain a controlled exotic species permit to conduct the activity. The entity requesting active partner status be required to submit a letter of request to the department that describes the proposed engagement in department-coordinated efforts to monitor and/or manage controlled exotic species in Texas and measures to be taken to prevent introduction of controlled exotic species into public water. Active partner status must be granted by means of a letter of approval from the department. The provision is necessary because the department seeks to engage with other governmental, quasi-governmental, or non-governmental organization or entity to assist in department efforts to curb controlled exotic species.

New §57.113(d) establishes that an employee of the department in the performance of official duties is exempt from the permit requirements of this subchapter. Requiring a department employee to obtain a permit while engaged in the duties of the department be counterproductive and inefficient.

New §57.113(e) and (f) establish the conditions under which persons can be permitted to possess prohibited exotic species without a permit, retaining the provisions of current §57.113(b) - (d) and providing additional stipulations for fish or shellfish other than mussels or oysters to be possessed without a permit if they have been gill-cut, killed using another means, frozen, or packaged on ice, in addition to the current exception for beheaded or gutted individuals.

New §57.113(g) stipulates that no person may possess or transport live or dead controlled exotic species of mussels that are attached to any vessel, conveyance, or dock or pier and provides an exception for vessels that are travelling directly to a service provider for mussel removal or maintenance or repair following notification of the department. Zebra mussels and quagga mussels *(Dreissena bugensis)*, both of which are currently listed as harmful or potentially harmful exotic species, are considered to be among the most problematic invasive species in the world, and zebra mussels have already been proven to be highly damaging in Texas. Preventing the transport of invasive mussels attached to boats is paramount for preventing the spread of zebra mussels within the state and to other states, and for preventing the introduction of quagga mussels into this state. To minimize this risk, invasive mussels attached to boats must be killed; however, the viability of those mussels cannot be assessed rapidly with any certainty by laypersons. The new subsection creates an exception for the possession and transport of mussels attached to or contained within a vessel in situations where the vessel must be transported to a service provider for removal of mussels, repair, or maintenance, provided the department is notified. To ensure the risks of transport can be addressed and coordinated by the department if necessary, the new subsection stipulates that the notification include date of transport, contact information for the person or entity transporting the vessel, vessel registration number, water body of origin to determine if it is infested with mussels, service provider location and contact information, and the water body where the vessel will return after service to assess risk of new introductions resulting from transport.

New §57.113(h) provides a qualified exception to permit requirements for licensed retail or wholesale fish dealers. Under current §57.113(k), a licensed retail or wholesale fish dealer is not required to possess a permit issued under the subchapter for certain species unless the retail or wholesale dealer is engaged in propagation of the species, provided the fish or shellfish have been gutted or beheaded. The new subsection clarifies that the fish dealer must obtain these species from a permit holder and provides additional methods that fish may be rendered inert. With respect to live Pacific blue shrimp *(Litopenaeus stylirostris)* or Pacific white shrimp *(L. vannamei)*, the new subsection

imposes the same clarification that the fish dealer must obtain these species from a permit holder.

New §57.113(i) recapitulates that the holder of a controlled exotic species permit may not place into public water, possess, import, export, sell, purchase, transport, propagate, or culture controlled exotic species unless authorized by the specific conditions of the permit. The new provision repeats for purposes of emphasis the prohibited acts articulated by Parks and Wildlife Code, §66.007 that are restated and elaborated upon in the new rules.

New §57.113(j) creates an exception to permit requirements for landowners (and their agents) who remove exotic plant species, zebra mussels, and applesnails of the genus Pomacea, provided the landowner or agent complies with the specific conditions sets forth for removal and transport. Invasive exotic plants frequently impede water access for lakefront landowners--particularly floating species such as giant salvinia and water hyacinth *(Eichhornia crassipes)*, which can continually reinvade cleared areas around shorelines and docks. Under current rules, a permit is required to possess these and other controlled exotic plants even for the purposes of disposal in addition to obtaining department approval of a nuisance aquatic vegetation treatment proposal. Invasive zebra mussels are also problematic, clogging and damaging water infrastructure and attaching their razor-sharp shells to shorelines and docks, posing a human health hazard. Under current rules, there are no provisions allowing unpermitted persons to possess and/or transport controlled exotic species of mussels removed from personal property, live or dead, for the purpose of disposal. Invasive applesnails are a common invader of both public water bodies and small private lakes and can decimate aquatic vegetation that provides important habitat for fish. Under current rules, there are no provisions allowing possession of the prohibited species of applesnails, live or dead, for the purposes of removal/disposal for population management. The new subsection allows the owner or manager of a property or their agent, except as provided by new §57.113(k), to without a permit possess and transport prohibited mussels of the genus Dreissena and prohibited applesnails of the genus Pomacea for the purpose of disposal provided that they are securely contained in black plastic bags (which accumulate heat that kills the organisms) prior to disposal. Inclusion of all species of Dreissena proactively provides for the potential need for removal and transport for disposal of invasive quagga mussels should they be introduced in Texas. Inclusion of all prohibited species of applesnails of the genus Pomacea is necessary due to difficulty distinguishing between some species without genetic analysis; however, it is believed that only *P. maculata* is currently found in Texas. For controlled exotic plants, the exception created by the new subsection also allows the option of drying fully prior to disposal in lieu of containment in bags.

New §57.113(k) requires a person, who in exchange for money or anything of value operates a mechanical plant harvester or otherwise physically removes controlled exotic species of plants from public water, to include persons who possess and transport controlled exotic plants following such removal operations, to possess a controlled exotic species permit. Under current rule, an exotic species permit is required to perform these activities; however, the new subsection explicitly requires a permit to be obtained by persons who do so for remuneration. The use of mechanical harvesters and other large-scale removal methods at a commercial scale could result in possession and transport of quantities of exotic plants in volumes exceeding those contemplated by the exception for permit requirement contained in new §57.113(j). Such volumes pose a greater biosecurity risk. By continuing to require a controlled exotic species permit for commercial activities, the department seeks to ensure that they are conducted in a verifiably biosecure manner.

New §57.113(l) creates an exception for the possession and transport of controlled exotic species for governmental or quasi-governmental agencies; operators of power generation, water control, or water supply facilities; private water intakes; entities removing garbage from public water bodies; or contractors working on their behalf performing standard operations, maintenance, or testing, provided the activities are in compliance with best management practices published by the department. The department recognizes that the enumerated entities may encounter the need to transport controlled exotic species for disposal under certain circumstances. Invasive exotic zebra mussels and some plants foul and clog intakes for facilities using or controlling raw surface water. Current rules do not address the periodic need for removal and disposal of these species. Zebra mussels attach to virtually any hard surface, including floating and submerged debris, and possession of such mussels is not explicitly addressed under current rule, which is problematic when mussels are attached to objects removed from public water bodies during river and lake clean-up events. The new subsection establishes an exception to address such situations. The best management practices will be developed and continually adapted as needed to provide practical guidelines that seek to minimize transport of viable organisms and thereby reduce biological risk.

New §57.113(m) provides an exception to permit requirements for persons who purchase, possess, or transport controlled exotic species of plants as hosts for biological control agents for the purpose of introduction for management of nuisance aquatic vegetation, provided that the identity of the plant species to be managed is confirmed by the department and the host plants and biological control organisms are obtained from the department, a biological control facility permitted under this subchapter, or an active partner, and the activities are in compliance with rules governing transport documentation and introduction of aquatic plants into public water, if applicable. The new subsection is intended to facilitate expansion of the use of biological control organisms to aid in management of controlled exotic plants such as giant salvinia and Alligatorweed *(Alternanthera philoxeroides)*. Introduction of biological control organisms often requires possession and transport of a small quantity of the prohibited host plant.

New §57.113(n) creates an exception to permit requirements for possession of specimens of controlled exotic mussels or plants provided they have been preserved using methods specified by rule for rendering the organisms nonviable. The current rules do not specifically provide for the possession of specimens for educational purposes at nature centers, school classrooms, or museum collections. The new subsection provides enhanced educational opportunities that could contribute to increased awareness of invasive species issues in Texas.

New §57.113(o) requires any person in possession of controlled exotic species to provide or allow the department take samples of any controlled exotic species for purposes of taxonomic or genetic identification and analysis by the department; furnish any documentation necessary to confirm controlled exotic species identity, the source of controlled exotic species, and eligibility to possess controlled species; make available for inspection during normal business hours any records required by the subchap-

ter as well as any retention location, facility, private pond, recirculating aquaculture system, or transportation vehicle or trailer used to conduct activities authorized under this subchapter; and demonstrate that activities are conducted in compliance with the requirements of the subchapter and in such a way as to prevent escape, release, or discharge of controlled exotic species. Under current rules (current §§57.119(a), (b), and (d), 57.131(c), and 57.132(b)), provisions governing inspections, reporting, and recordkeeping apply only to permit holders. For purposes of enforcement of the various new provisions of this section that create exceptions to permit requirements, the new subsection extends the responsibilities enumerated in those sections to all persons in possession of controlled exotic species.

New §57.113(p) establishes protocols for the disposition of controlled exotic species held by a person who is no longer legally permitted to be in possession of the controlled exotic species because of violations, permit renewal refusal, or cessation/discontinuation of permitted or otherwise authorized activities for any other reason. In the case of elective discontinuation of permitted operations, current rules (§57.119(c)) stipulate that all remaining inventory of the permitted species be lawfully sold, transferred, or destroyed. However, the current rules make no provisions for dealing with failure to comply with the rules or with unlawful possession, leaving the potential for persons to be in possession of large quantities of controlled exotic species (e.g., for aquaculture purposes). New §57.113(p) establishes a course of action for dealing with unlawful possession, failure to comply with rules pertaining to elective discontinuation of operation, and circumstances under which a permit holder is ordered to cease operation. Under the new rules, the department will prescribe, on a case by case basis, a disposition protocol for destruction, disposal, or transfer of controlled exotic species. The new subsection provides that if the disposition protocol is not implemented within 14 days of notification by the department, the department could implement a prescribed disposition protocol. Furthermore, in the event that a disposition protocol is implemented by the department, the new subsection mandates financial responsibility for all costs associated with the destruction, disposal, or transfer of controlled exotic species held in the facility be borne by the affected person. The new provisions are necessary to ensure that persons who are in unlawful possession of controlled exotic species and demonstrate an inability to dispose of such species in lawful compliance with department orders bear the costs of disposal rather than having the people of the state bear such costs.

New §57.114, concerning Controlled Exotic Species Permits, enumerates the various types of controlled exotic species permits governed under the subchapter.

New §57.114(a) provides for the issuance of a controlled exotic species permit for the culture, transport, and sale of water spinach *(Ipomoea aquatica)*--an exotic aquatic plant that is sold for human consumption.

New §57.114(b) provides for the issuance of controlled exotic species permits for the commercial aquaculture of triploid grass carp; blue tilapia *(Oreochromis aureus)*, Mozambique tilapia *(O. mossambicus)*, Nile tilapia *(O. niloticus)*, Wami tilapia *(O. hornorum)*, and hybrids; and Pacific white shrimp *(Litopenaeus vannamei)* or Pacific blue shrimp *(L. stylirostris)*, and stipulates that regulated activities must be performed by the permittee, an authorized person named on the permit, or a person supervised by an authorized person, which is necessary to ensure that all activities under a permit are conducted by someone lawfully liable for compliance with the provisions of the permit and the subchapter.

New §57.114(c) provides for the issuance of controlled exotic species permits for research that benefits indigenous species or ecosystems and/or provides insight on ecology, risks, impacts, or management approaches for controlled exotic species. Current rules provide that permits may be issued for department-approved research programs (§57.113(a)(1)). The new rule also stipulates that sale of controlled exotic species held under a research permit is prohibited unless authorized in writing by the Director of the Coastal Fisheries Division or Inland Fisheries Division (or their designee), which is a refinement of the provisions of current §57.113(a).

New §57.114(d) provides for the issuance of a controlled exotic species permit for the propagation of controlled exotic species of plants for the purposes of production of biological control agents for management of controlled exotic species of plants. Biological control agents such as salvinia weevils *(Cyrtobagous salviniae)* play an important role in the integrated pest management strategy for achieving control of invasive exotic species such as giant salvinia in Texas lakes.

New §57.114(e) provides for issuance of controlled exotic species permits for zoological display, which is a provision of current §57.113.

New §57.114(f) provides for the issuance of a controlled exotic species for specific limited purposes.

New §57.114(f)(1) provides for the issuance of a controlled exotic species permit to persons other than commercial aquaculturists who sell triploid grass carp or tilapia. The new provision allows permit holders to sell live triploid grass carp or tilapia purchased from a commercial aquaculture facility permit holder or lawful out-of-state source as well as for lawful out-of-state suppliers to obtain a Texas permit and prohibit persons holding a permit issued under the new paragraph from using the controlled exotic species for aquaculture or holding the controlled exotic species in a facility in Texas for more than 72 hours. The new provision is necessary to provide a mechanism for persons engaged in the business of buying tilapia and triploid grass cap for resale who do not have a facility.

New §57.114(f)(2) provides for the issuance of controlled exotic species permits for introduction into public water or private water of live triploid grass carp, which is a provision of current §57.125, concerning Triploid Grass Carp Permit; Application, Fee.

New §57.114(f)(3) provides for the issuance of controlled exotic species permits for interstate transit of controlled exotic species, which is addressed in new §57.121, concerning Transport of Live Controlled Exotic Species.

New §57.114(f)(4) provides for the issuance of controlled exotic species permits for the possession and disposal of controlled exotic plant species removed from public or private waters, the particulars of which are set forth in new §57.113, concerning General Provisions and Exceptions.

New §57.114(f)(5) provides for the issuance of controlled exotic species permits for possession of controlled exotic species of plants for wastewater treatment by a wastewater treatment facility, the particulars of which are set forth in new §57.113, the particulars of which are set forth in new §57.113,concerning General Provisions and Exceptions.

New §57.114(f)(6) provides for the issuance of permits for the possession, transport, and disposal of controlled exotic species related to activities not otherwise authorized by the provisions of new §57.113, concerning General Provisions and Exceptions, or new §57.114, concerning Controlled Exotic Species Permits.

New §57.115, concerning Special Provisions--Tilapia, prescribes the provisions of the subchapter that specifically apply to the possession of tilapia.

New §57.115(a) provides that no person may possess, import, export, sell, purchase, transport, propagate, or culture, or offer to import, export, sell, purchase, or transport tilapia unless the person is the holder of a valid controlled exotic species permit and is in compliance with the terms of the permit. The new subsection is specific to tilapia, but recapitulates the provisions of Parks and Wildlife Code, §66.007 and the new rules that the holder of a controlled exotic species permit may not place into public water, possess, import, export, sell, purchase, transport, propagate, or culture controlled exotic species unless authorized by the specific conditions of the permit, to include an offer to do any of those things.

New §57.115(b) requires private ponds stocked with tilapia to be designed and maintained such that escape, release, or discharge of tilapia into public water is not likely to occur. The current rules do not address design or maintenance requirements for private ponds. The department believes that it is important to require private ponds to be designed and maintained in such a fashion as to minimize the danger of escapement of controlled exotic species held under a permit.

New §57.115(c) establishes an exception to the provisions of the section for non-commercial aquaculture of four controlled exotic species of tilapia without a controlled exotic species permit. Under current rule §57.115(i), only one species of tilapia (Mozambique tilapia *(Oreochromis mossambicus)*, may be possessed for non-commercial aquaculture without a permit. Home aquaponics has increased in popularity in recent years, and other species have become desirable, particularly for consumption. Under the new subsection, no permit is required to purchase, possess, transport, or propagate blue tilapia (O. aureus), Mozambique tilapia, Nile tilapia *(O. niloticus)*, Wami tilapia *(O. hornorum)*, and hybrids between these species for non-commercial aquaculture purposes. The new provision requires tilapia to be purchased and transported in accordance with the provisions of the subchapter governing transport of live exotic species and the tilapia so held could not be sold, offered for sale, or exchanged for money or anything of value. Current rules (§57.115(i)) allow the purchase and transport of Mozambique tilapia without a permit, but the sale of such fish is prohibited without an exotic species or wholesale dealer permit. Under the new subsection, tilapia are required to be kept in a recirculating aquaculture system constructed such that escape, release, or discharge of tilapia into public water is not likely to occur. Additionally, the new subsection requires all recirculating aquaculture systems to be constructed such that no discharge of wastewater or waste into or adjacent to water in the state is likely to occur, and that they be equipped with adequate security measures in place to prevent unauthorized removal of tilapia. Finally, the new subsection requires all tilapia transferred to another person or disposed be killed in accordance with the provisions of new §57.113(f). The department has determined that recirculating aquaculture systems operated in compliance with the new provisions pose minimal risk of accidentally introducing tilapia into public waters of the state.

New §57.115(d) prescribes the requirements for the stocking of controlled exotic species of tilapia in private ponds. The new subsection is intended to minimize detrimental impacts of escapes on Texas' Fish Species of Greatest Conservation Need, as identified in the Texas Conservation Action Plan. Under current §57.113(i), Mozambique tilapia may be stocked in private ponds without a site evaluation by the department; however, many ponds in Texas are creek impoundments capable of overflow during rains, which could result in the escape of controlled exotic species of tilapia into public waters. As part of a strategic conservation planning framework used to develop the new rules, staff conducted a spatial conservation assessment informed by comprehensive review of the scientific literature and models of species distribution probability. The assessment identified key areas where escape of tilapia is likely to have detrimental impacts on fish designated as Species of Greatest Conservation Need. The assessment also identified areas of economic activity (comparatively high tilapia stocking) to balance potential conservation actions against potential economic impacts. Based upon this assessment, the rules establish two zones "a "conservation zone" and a "stocking zone."

New §57.115(d)(1) reiterates that no person holding regulated species of tilapia in a private pond without a controlled exotic species permit may sell, offer for sale, or exchange tilapia for money or anything of value, which is necessary to ensure that it is abundantly clear that commercial activity involving regulated species of tilapia without a controlled exotic species permit authorizing such activities is prohibited.

New §57.115(d)(2) stipulates that if a county designated as being within the stocking zone is subsequently designated as being within the conservation zone, the provisions of the new rules that govern conservation zones then apply to the county, which is necessary to make clear that rules governing conservation zones apply to counties in conservation zones.

New §57.115(d)(3) prescribes the provisions for stocking tilapia in private ponds within the conservation zone. New subparagraph (A) requires a landowner seeking to stock a pond located within a conservation zone to obtain approval from the department by submitting a completed application to the department at least 30 days prior to the prospective stocking (no associated fee). New subparagraph (B) provides for department approval of the stocking authorization upon finding that the pond is designed and will be maintained such that escape, release, or discharge of tilapia from the pond into public water is not likely to occur and that the stocking does not pose a significant risk to any species designated as endangered, threatened, or a Species of Greatest Conservation Need. New subparagraph (C) provides that a stocking authorization applies only to the specific pond for which it is issued, is transferrable, and will neither expire nor require renewal provided the pond is not modified in any way could result in increased risk of escape, release, or discharge of controlled exotic species into public water. A conservation zone is an area where the escape of tilapia into public water represents a significant potential negative impact to imperiled fishes. The department believes it is prudent to evaluate and approve prospective stocking activities within the conservation zone on a pond-by-pond basis. To ensure that there is sufficient time for the department to conduct an ecological assessment, the new paragraph requires an application to be submitted no less than 30 days before the intended date of stocking. Because the conservation zone reflects the area the department has determined is most ecologically vulnerable to accidental releases of exotic species of tilapia, the paragraph also predicates stocking au-

thorization on a department determination that the prospective stocking site is physically sufficient to make escapement unlikely and that the stocking does not pose a significant threat to species of concern on the landscape. Finally, the department considered that the ownership of private ponds can change as a result of a variety of factors (sale, gift, or inheritance, etc.) and has determined that so long as the pond in question is not modified in such a way as to enhance risk of escapement, there is no need to reauthorize or renew the stocking approval which is intended to preclude complications as a result of real estate transactions. Current rules provide a regulatory exception only for the stocking of Mozambique tilapia in private ponds. The new rules allow stocking of other species such as blue tilapia, Nile tilapia, Wami tilapia, and hybrids between these species within the conservation zone upon approval by the department.

New §57.115(d)(4) prescribes the provisions for stocking tilapia in private ponds within the stocking zone, requiring only that private ponds stocked with tilapia be compliant with new §57.115(b), which requires ponds to be designed and maintained such that escape, release, or discharge of tilapia from the pond into public water is not likely to occur, which is necessary for reasons discussed earlier in this preamble. A stocking zone is an area where stocking is common and there is a low potential negative ecological impact from accidental escapement.

New §57.115(d)(5) retains the requirement of current §57.113(i) that tilapia stocked in a private pond must be killed by one of the approved methods set forth in new §57.113(e) prior to transfer to another person.

New §57.115(d)(6) retains the recordkeeping requirements of current §57.116(d).

New §57.115(e) reiterates the specific requirements of new subsection (d) that prohibit the stocking of tilapia in private ponds within the conservation zone without the landowner or their agent first obtaining written approval from the department.

New §57.116, concerning Special Provisions--Triploid Grass Carp, sets forth the provisions governing the issuance of permits for stocking of triploid grass carp into public or private water.

New §57.116(a) provides for the issuance of a controlled exotic species permit for stocking triploid grass carp in public water upon a finding by the department that the stocking is not likely to affect threatened or endangered species or interfere with management objectives for other species or habitats, which are provisions of current rule (§57.126(a)(5) - (7)).

New §57.116(b) provides for the issuance of a controlled exotic species permit for stocking triploid grass carp in a private pond upon a finding by the department that the stocking is not likely to result in an introduction unlawful under Parks and Wildlife Code, §66.015. Under Parks and Wildlife Code, §66.015, a person commits a violation if fish, shellfish, or aquatic plants the person possesses or has placed in nonpublic water escape into the public water of the state and the person does not hold a permit issued by the department authorizing such release or escapement; therefore, the new subsection reiterates the statutory provision to clarify that permit issuance is conditioned on a determination by the department that escape is not likely to occur. The new subsection also reiterates current rules (§57.126(a)(5) - (7)) by requiring permit issuance to be conditioned on a department finding that the prospective stocking not affect threatened or endangered species, or interfere with management objectives for other species or habitats.

New subsection (c) requires an applicant for a triploid grass carp permit for private pond stocking to allow, upon request by the department, the inspection of the affected ponds or lakes by an employee of the department during normal business hours for the purposes of evaluating whether the private pond meets the criteria for permit issuance, which is a requirement of current §57.125(d).

New subsection (d) stipulates that the stocking rate authorized by the department in the terms of a controlled exotic species permit be determined by considering the surface area of the water body to be stocked and the extent of the vegetation to be managed. Current §57.126(c) stipulates that the department will consider the surface area of the pond or lake named in the permit application, and, as appropriate, the percentage of the surface area infested by aquatic vegetation. The new subsection replaces "the percentage of the surface area infested by aquatic vegetation" with "the extent of the vegetation to be managed." Because the degree of infestation for submerged aquatic vegetation species is a function of both the surface area and water depth of the infestation, the new provision liberalizes the factors considered by the department, such as the species of nuisance aquatic vegetation present and their vulnerability to triploid grass carp, in determining the appropriate number of fish to be stocked.

New subsection (e) enumerates the sources from which triploid grass carp may be lawfully obtained by stipulating that triploid grass carp may be purchased or obtained only from the holder of a permit that authorizes the sale or from a lawful out-of-state source. Under current §57.124(c), only exotic species permit holders are permitted to purchase triploid grass carp from a lawful out-of-state source. The new subsection allows purchase of triploid grass carp by anyone, provided the source is either a controlled exotic species permit holder authorized to possess and sell triploid grass carp or an out-of-state entity allowed to sell triploid grass carp. The change is intended to broaden the opportunities available for permitted persons to obtain triploid grass carp.

New subsection (f) authorizes the department to introduce triploid grass carp into public water in situations where the department has determined that there is a management need and when stocking will not affect threatened or endangered species or other important species or habitats. Current rules do not specifically authorize the department to stock triploid grass carp in public water, but Parks and Wildlife Code, §12.013, authorizes the department to regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state; thus, the new subsection recapitulates existing

statutory authority.

New subsection (g) prescribes the requirements for the issuance of controlled exotic species permits to stock triploid grass carp in private ponds.

New subsection (g)(1) requires private ponds stocked with triploid grass carp to be designed and maintained such that escape, release, or discharge of triploid grass carp into public water is not likely to occur. Although current §57.117, concerning Exotic Species Permit: Application Requirement, requires an applicant for an exotic species permit to demonstrate to the department that an existing aquaculture facility, private facility, or wastewater treatment facility meet the requirements of current §57.129, concerning Exotic Species Permit: Private Facility Criteria, it is not clear that the provision is applicable to a private pond (although the current definition for "private

facility" includes private ponds). The new subsection eliminates possible ambiguity by, in tandem with the amendment to §57.111, specifically excluding private ponds from the definition of "facility" but specifically referencing triploid grass carp in the definition of "private pond." The intent of the new subsection is to clarify the department's authority to require private ponds to be designed and maintained in such a fashion as to minimize the danger of escapement of triploid grass carp.

New subsection (g)(2) requires a landowner seeking to stock triploid grass carp to obtain a permit for that purpose from the department. Under Parks and Wildlife Code, §66.007, no person may import, possess, sell, or place into the public water of this state exotic harmful or potentially harmful fish or shellfish except as authorized by rule or permit issued by the department. Similarly, new §57.113, concerning General Provisions and Exceptions, prohibits the introduction into public water, possession, importation, exportation, sale, purchase, transport, propagation, or culture of any species, hybrid of a species, subspecies, eggs, seeds, or any part of any species defined as a controlled exotic species. The department believes it is necessary to reproduce the same provisions with respect to triploid grass carp in the interests of emphasis.

New subsection (g)(3) stipulates that a permit authorizing the stocking of triploid grass carp is specific to the ponds on the property for which it is issued, is transferrable, and will neither expire nor require renewal provided the pond is not modified in any way that could result in increased risk of escape, release, or discharge of controlled exotic species into public water. It is axiomatic that the release of triploid grass carp exotic species is a cause of concern. Therefore, the new paragraph restricts stocking authorization to specific ponds. Additionally, the department considers the fact that ownership of private ponds can change as a result of a variety of factors (sale, gift, or inheritance, etc.) and has determined that so long as the ponds in question are not modified in such a way as to enhance risk of escapement, there is no need to reauthorize or renew the stocking approval, which is intended to preclude complications as a result of real estate transactions.

New subsection (g)(4) prohibits the sale, offering for sale, or exchange in return for money or anything of value of triploid grass carp held in a private pond, which is necessary because under current §57.124(a), triploid grass carp may be sold only to another person holding a permit authorizing possession of triploid grass carp. The new subsection is intended to ensure that it is abundantly clear that commercial activity involving triploid grass carp without a controlled exotic species permit authorizing such activities is prohibited.

New subsection (g)(5) stipulates that if a county designated as being within the conservation zone is subsequently designated as being within the stocking zone, the provisions of the new rules that govern the stocking zone then apply to the county, which is necessary to make clear that rules governing activities in the stocking zone apply to counties in the stocking zone.

New subsection (g)(6) stipulates that within a stocking zone, permit applications requesting ten or fewer triploid grass carp require administrative review only. The application shall be submitted at least 14 days prior to the intended stocking. The department believes that small-scale introductions of triploid grass carp within the stocking zone represent a relatively innocuous potential for ecological concern; thus, it is not necessary for such introductions to be the subject of exhaustive review. However, the department also believes that there should be sufficient time for the administrative review to take place; therefore, the new paragraph requires an application requesting ten or fewer triploid grass carp to be submitted no less than 14 days before the intended date of stocking.

New subsection (g)(7) prescribes recordkeeping requirements for persons in possession of live triploid grass carp stocked in a private pond. The new paragraph requires a person in possession of live triploid grass carp stocked in a private pond to possess and retain for a period of one year from the date the grass carp were obtained or as long as the grass carp are in the water, whichever is longer, either an exotic species transport invoice or an aquatic product transport invoice from a lawful out-of-state source and documentation that the grass carp have been certified as triploid by the Grass Carp Inspection and Certification Inspection Program operated by the U.S. Fish and Wildlife Service.

New subsection (g)(8) retains the requirement of current §57.113(i) that tilapia stocked in a private pond must be killed by one of the approved methods set forth in new §57.113(e) prior to transfer to another person.

New §57.117, concerning Special Provisions--Shrimp Aquaculture and Health Certification, sets forth the special provisions governing shrimp aquaculture and the health certification of cultured shrimp, which differ from the current provisions of §57.114, concerning Health Certification of Harmful or Potentially Harmful Exotic Shellfish as noted, with numerous nonsubstantive changes to terminology to be consistent with other provisions of the new rules.

New §57.117(a) requires any facility containing controlled exotic species of shrimp to be capable of placing stocks into quarantine condition. Under current §57.129(d), an aquaculture facility containing harmful or potentially harmful exotic shellfish is required to be capable of segregating stocks of shellfish that have not been certified as free of disease from other stocks of shellfish on the aquaculture facility, which is essentially the same thing.

New §57.117(b) provides that a facility containing live Pacific blue shrimp *(Litopenaeus stylirostris)* be located outside the exotic shrimp exclusion zone. Current §57.113(k)(2) contains this requirement, but also stipulates that Pacific blue shrimp be cultured under quarantine conditions. Staff has determined that, under the requirements of new §57.117, pertaining to disease inspections and quarantine upon manifestations of disease, and location of facilities outside the exotic shrimp exclusion zone, this activity poses a minimal risk to the existing biological ecosystem and native shrimps, and quarantine conditions are not necessary.

New §57.117(c) requires disease certification to be conducted by a disease specialist, which is a provision of current rules under §57.114(a).

New §57.117(d) requires any person importing live controlled species of exotic shrimp to, prior to importation, provide documentation to the department that the controlled exotic species of shrimp to be imported have been certified as disease-free and receive written acknowledgment from the department that the requirements of for demonstrating disease-free status have been met. The new provision is a requirement of current §57.114(b).

New §57.117(e) requires any person in possession of controlled exotic species of shrimp for the purpose of production of post-larvae to provide to the department monthly documentation that nauplii and post-larvae have been examined and certified

to be disease-free. The new subsection further provides that if monthly certification cannot be provided, the shrimp must be maintained in quarantine condition until the department acknowledges in writing that the requirements for demonstrating stock is disease-free or conditions specified in writing by the department under which the quarantine condition can be removed have been met. The new provision is a requirement of current §57.114(c).

New §57.117(f) requires any person who possesses controlled exotic species of shrimp in a facility regulated under the subchapter who observes one or more of the manifestations of diseases of concern listed on the clinical analysis checklist provided by the department to place the entire facility under quarantine condition immediately, notify the department, and either request an inspection from a disease inspector or submit samples of the affected shrimp to a disease specialist for analysis and forward the results of such analyses to the department upon receipt. The new provision is a requirement of current §57.114(d).

New §57.117(g) provides that no more than 14 days prior to harvesting ponds or discharging any waste into or adjacent to water in the state, the permit holder must request an inspection from a disease inspector or submit samples of the shrimp from each pond or other structure containing such shrimp to a disease specialist for analysis and submit the results of such analyses to the department upon receipt, using the clinical analysis checklist. The new provision is a requirement of current §57.114(e).

New §57.117(h) provides that upon receiving a request for an inspection from a permit holder, a disease inspector may visit the facility, examine samples of shrimp from each pond or other structure from which waste will be discharged or harvest will occur, complete the clinical analysis checklist provided by the department, sample shrimp from or inspect any pond or structure the disease inspector determines requires further investigation, and provide a copy of the clinical analysis checklist and any other inspection reports to the permit holder. The new provision is a requirement of current §57.114(f).

New §57.117(i) provides that if the results of an inspection performed by a disease inspector indicate the presence of one or more manifestations of disease, the permit holder be required to immediately place or continue to maintain the entire facility under quarantine condition and submit samples of the controlled exotic species of shrimp from the affected portion(s) of the facility to a disease specialist for analysis. Results of such analyses be required to be forwarded to the department upon receipt. The new provision is a requirement of current §57.114(f).

New §57.117(j) stipulates that if the results of a required analyses performed by a disease specialist indicate the presence of disease, the permit holder be required to immediately place the entire facility under quarantine condition. The new provision is a requirement of current §57.114(h).

New §57.117(k) stipulates that if the results of inspections or analyses of controlled exotic species of shrimp from a facility placed under quarantine condition indicate the presence of disease, the facility shall remain under quarantine condition until the department removes the quarantine condition in writing or authorizes in writing other actions deemed appropriate by the department based on the required analyses. The new provision is a requirement of current §57.114(i).

New §57.117(l) provides that if the results of required inspections or analyses indicate the absence of any manifestations of disease, the permit holder may begin discharging from the facility. The new provision is a provision of current §57.114(j).

New §57.118, concerning Special Provisions--Water Spinach, sets forth the provisions regarding possession, cultivation, transport, and sale of water spinach, as well as providing for recordkeeping and reporting requirements. The new section represents a reorganization of current §57.136, concerning Special Provisions--Water Spinach with substantive differences as noted. Numerous nonsubstantive changes have been made to enhance clarity and change terminology to be consistent with other provisions of the new rules.

New §57.118(a) provides that except as authorized by a permit issued under the new section or otherwise provided by the subchapter, no person may culture water spinach or possess or transport water spinach in exchange for or with the intent to exchange for money or anything of value. Under current §57.136(a)(2), no person may grow water spinach or possess or transport water spinach for a commercial purpose unless that person possesses a valid exotic species permit issue by the department for that purpose. The new provision is nonsubstantive reformulation of those requirements.

New §57.118(b) provides that no permit is required to purchase or possess water spinach for personal consumption provided the water spinach was lawfully purchased or obtained and is not propagated or cultured. The new subsection is a mixture of provisions in current §57.136(a)(2) and (4).

New §57.118(c) sets forth the conditions under which water spinach could be purchased or obtained for sale or re-sale and consists of the provisions of current §57.136(a)(3), with one substantive change. Paragraph (2) of the new subsection reduces the record-retention time period stipulated in the current rule from two years to one. The department has determined that a one-year retention period is sufficient to allow the department to investigate the commercial pathways of water spinach commerce with respect to a single recipient.

New §57.118(d) prescribes facility standards for culture of water spinach. The new subsection consists of the provisions of current §57.136(c)(1) - (7) and one provision from current §57.119(a)(2), with nonsubstantive changes. The provision being relocated from §57.119(a)(2) specifies that a copy of the permit be prominently displayed at the facility for which it was issued. Several provisions of the new subsection are new. The requirements of current §57.136(d)(5) do not apply to greenhouses built before 2009. New §57.118(d)(7) removes that limitation to provide the department discretion to grant a modification of the 10-foot buffer width requirement based on the location of greenhouses built at any time. The department considers that in some instances, greenhouses built prior to permit application could be located within less than 10 feet of the property boundary and requiring an applicant to move or rebuild a greenhouse could be problematic. The new rule allows the department to evaluate such sites on a case-by-case basis to assess risk of escape and potentially grant a modification of the buffer width requirement to avoid imposing such a burden upon the applicant, where possible and consistent with the department's statutory obligation to protect native organisms and ecosystems.

New §57.118(d)(8) stipulates that greenhouses where water spinach is cultured be maintained at all times in such a way as to prevent escape or release of water spinach and requires notification of the department in the event that facility repairs

are necessary to prevent escape. In general, the current rules are obviously intended to protect native systems and organisms from potential deleterious effects of the escape of water spinach, and the new paragraph expressly states that intent in the form of a requirement governing maintenance obligations.

New §57.118(d)(9) requires a permit holder to demonstrate to the department, during annual facility inspections, that the activities authorized under the subchapter are conducted in compliance with the requirements of the subchapter and the facility is maintained in such a way as to prevent escape or release of water spinach. Current §57.119(b) provides for department inspection of permitted facilities at any time that permitted activities are ongoing. Additionally, under current §57.120(b)(2), all facilities for which a permit renewal is sought must be in compliance with all applicable facility requirements of the subchapter. The new paragraph implements the requirement for an annual inspection, which the department will conduct during the growing season when risk of escape is greatest, with the additional benefit of lessening administrative burdens by reducing both the number of renewal inspections that must be conducted at the end of each permit year and the permit renewal processing times.

New §57.118(e) requires all water spinach transported from a facility (including water spinach transported under an interstate transport authorization) to be packaged in a closed or sealed container having a volume no greater than three cubic feet, not mixed or commingled with any other material or substance, and identified such that each container of water spinach shall have a label placed on the outside of the container, clearly visible and bearing the legend "Water Spinach" in English. The new subsection is a requirement of current §57.136(d)(1) and (2).

New §57.118(f) is a revision of current §57.136(c)(6) regarding the processing of water spinach. The rule clarifies that all handling and packaging of water spinach must be done at the permitted facility within the vegetation-free buffer area and that all water spinach fragments must be collected and disposed as described in subsection (k) of the new section. Current rules simply require handling to be done at the permitted facility and in such a manner as to prevent dispersal. However, based upon activities observed during facility inspections, the department has determined that additional emphasis on appropriate biosecurity measures is needed to provide assurance that the potential dispersal of water spinach is minimized.

New §57.118(g) requires a transport invoice to accompany each sale or transfer of water spinach and prescribes the content of a transport invoice, all of which are contained in the provisions of current §57.118(3).

New §57.118(h) creates and provides for the content and use of a transport log for permit holders transporting water spinach to or from a permitted facility. The department, after investigating the nature of commercial water spinach production and distribution, determined that in the typical business model the point of sale is the buyer's location and not the facility where the water spinach was cultured. Current §57.136(d)(3) requires an individual transport invoice to be generated for each sale before the shipment leaves a culture facility, which the department has determined is somewhat problematic for the regulated community. Therefore, the new subsection creates a process to be used in lieu of the current process, one where documentation is based on the point of delivery rather than production. The new subsection requires a permit holder to execute a water spinach transport invoice for each receiver at the time the water spinach is delivered and maintain and possess a current and accurate daily transport log at all times during transport. The content of the daily transport log consists of the date and time of shipment; the permit holder's name, address, phone number, and exotic species permit number; the amount of water spinach in possession; the water spinach transport invoice number for each delivery, the receiver/supplier's name, address, and phone number; the type of transfer "delivery or receipt; the amount of water spinach transferred; and the amount of water spinach in possession upon return to the facility. The new subsection is intended to provide a more flexible method of documentation for the regulated community while preserving the department's ability to monitor the production and movement of a controlled exotic species through a chain of custody.

New §57.118(i) sets forth the record retention requirements for the new rule, requiring copies of each daily transport log, transport invoice, and receipt or documentation for water spinach obtained from an out-of-state source to be retained for one year. Current §57.136(e)(2) specifies a record retention period of two years, which applies to all records; thus, the new subsection reduces administrative burden on the regulated community by reducing the volume of documentation required to be maintained and the time period it must be retained. The new subsection also requires records and documents required by the subchapter to be provided to the department during normal business hours upon request of a department employee acting in the scope of official duties, which is a requirement of current §57.136(e)(3).

New §57.118(j) prescribes the reporting requirements for persons subject to the provisions of the new section, stipulating the dates of quarterly reports and clarifying that required reports must be submitted even for time periods during which no sales took place. The new subsection is a requirement under current §57.136(e)(1).

New §57.118(k) sets forth various provisions regarding requirements for the prevention of escape of water spinach from a facility.

New paragraph (1) specifies that water spinach may not be allowed to escape from a facility nor be released or spread outside the facility during cultivation, handling, packaging, processing, storage, shipping, or disposal. This provision reiterates the essential components of numerous current rules and statutes, such as Parks and Wildlife Code, §66.007, which prohibits the importation, possession, sale, or placement into the public water of this state of exotic harmful or potentially harmful fish or shellfish except as authorized by rule or permit issued by the department, and §66.0071, which prohibits the importation, possession, sale, or placement into the public water of this state of aquatic plants designated by the department as harmful or potential harmful except as authorized by rule or permit issued by the department.

New paragraph (2) reiterates the provisions of current §57.136(a)(6) by prohibiting the use of water spinach to feed animals.

New paragraph (3) specifies that water spinach not sold, transferred, or consumed, and all fragments of water spinach not growing in soil or packaged must be placed into a secure container until packaged or transported to a secure waste or compost bin and composted, dried fully, or placed into black plastic bags prior to disposal. The department believes that reproductively viable water spinach should be handled and stored in such a manner as to reasonably prevent escape to native systems. Therefore, the new paragraph prescribes that all stock not grow-

ing in soil or package be containerized or otherwise rendered non-threatening.

New paragraph (4) requires the holder of a permit issued under this subchapter to notify the department within 72 hours of discovering the escape or release of water spinach from a facility or during transport. Current rules do not impose notification requirements on persons growing or transporting water spinach. The department believes it is prudent to do so, first to be consistent with similar provisions elsewhere in the subchapter, and second because it is intuitive that the release of water spinach, a harmful or potentially harmful species, should be reported quickly in order to provide the highest assurance of remediation.

New paragraph (5) requires a permit holder, in the event that a facility appears to be in imminent danger of flooding or other circumstance that could result in the escape or release of water spinach, to immediately begin implementation of emergency measures to prevent the escape or release of water spinach and notify the department of implementation of emergency measures in accordance with provisions specified in the permit. Current rules do not impose notification requirements on persons growing water spinach. The department believes it is prudent to do so, first to be consistent with similar provisions elsewhere in the subchapter, and second because it is intuitive that the potential unintended release of water spinach, a harmful or potentially harmful species, should be responded to immediately by the permit holder and reported quickly in order to provide the highest assurance of remediation.

New §57.118(k)(6) (current §57.136(f)) provides that, in the event that water spinach escapes or is released from a greenhouse or a facility, the facility permit holder is responsible for all costs associated with the detection, control, and eradication of free-growing water spinach resulting from such escape or release and subsequent dispersal. Additionally, the new paragraph clarifies that water spinach growing outside a greenhouse is considered to have escaped.

New §57.118(k)(7) stipulates that water spinach being cultured without a permit for whatever reason be subject to a department-prescribed disposition protocol, in accordance with new §57.113, concerning General Provisions and Exceptions. Although current rules specify disposition protocols for controlled exotic species other than water spinach, the department believes it is prudent to do so, first to be consistent with similar provisions elsewhere in the subchapter, and second because it is intuitive that water spinach being grown without a permit should be disposed of in a matter that precludes spread.

New §57.118(l) provides for the department to prescribe a disposition protocol for water spinach following a department decision to deny permit issuance or renewal, which is necessary to ensure that water spinach that can no longer be legally possessed is not disposed of in a way that constitutes a threat to native ecosystems.

New §57.119, concerning Minimum Facility Requirements, prescribes requirements for infrastructure and processes at facilities where controlled exotic species are possessed, propagated, cultured, or sold under a controlled exotic species permit, excluding private waters permitted for triploid grass carp.

New §57.119(a)(1) provides for general requirements for facilities other than those permitted for culture of water spinach (i.e., fish/shellfish aquaculture/holding facilities).

New §57.119(a)(1)(A) requires prominent display of a copy of the permit at the facility for which it was issued, which is required under current §57.119(a)(2).

New §57.119(a)(1)(B) stipulates that a facility must be maintained in compliance with the standards set forth in the section at all times unless the department has been notified that facility repairs are necessary. Under current §57.119(j), all devices required in the exotic species permit for prevention of discharge of exotic species from a facility are required to be in place and properly maintained. The new subparagraph retains those requirements but removes the potentially confusing reference to "all devices" to clarify that the intent of the current provision is to impose a general duty upon the permit holder to prevent discharge of controlled exotic species from a facility. Because the nexus of all aspects of facility infrastructure and process is the biosecurity of the facility, "devices" in the sense it used in the current rule is intended to refer to the entirety of the facility and the processes conducted within it.

New §57.119(a)(1)(C) requires permit holders to satisfactorily demonstrate to the department at intervals of no more than five years, unless longer intervals are approved by the department based on systematic risk analysis, that activities authorized at the permit holder's facility under a controlled exotic species permit are conducted in compliance with the requirements of the subchapter. The intent of the new provision is to protect native systems and organisms from the threat of escaped harmful or potentially harmful exotic species by enhancing biosecurity through periodic inspections of facilities to verify that permitted activities are being conducted in compliance with applicable rules. The new provision also provides for department discretion to assign longer inspection intervals for facilities with low risk of escape. For those facilities that either by virtue of their design or the relatively low escapement risk of the species being possessed, the department believes it is sensible to allow for longer inspection intervals.

New §57.119(a)(1)(D) prescribes training requirements for persons such as the employees and staff of facilities operated by permit holders. The provision requires permit holders to ensure that employees and staff are trained to understand and comply with permit conditions and requirements and to implement the facility's department-approved emergency plan, if necessary, to prevent escape, release, or discharge of controlled exotic species into public water during a natural disaster such as a hurricane or flood. The provision is necessary to ensure that all persons involved with the operation of a facility are aware of and have been trained to perform permitted activities, including emergency response activities.

New §57.119(a)(2) creates an exemption from facility requirements for limited special purpose permit holders who purchase, transport, and sell controlled exotic species for stocking in private ponds, but who do not hold the species in a facility. The new provision also provides that all required records and documentation be made available to department staff during normal business hours within 72 hours following a request by the department. The new provision is intended to address the special circumstances of those permit holders who act as intermediaries between sources and destinations and do not operate facilities where controlled exotic species are held. The record retention component of the new paragraph is necessary to enable the department to monitor and verify permit compliance and is consistent with similar provisions of the new rules that have been discussed previously in this preamble.

New §57.119(a)(3) requires facilities to be equipped with security measures to discourage unauthorized removal of controlled exotic species, which is a requirement of current §57.129(e). The current rule specifies that required security measures must prevent unrestricted or uncontrolled access and unauthorized removal of controlled exotic species. The department has determined that the rules should provide for greater flexibility with respect to security measures because absolute security is not realistic. Therefore, the provision modifies the current requirements to require any facility containing controlled exotic species to have security measures in place to reasonably minimize the risk of unauthorized removal of controlled exotic species, which allows the department to review security measures on a case-by-case basis.

New §57.119(a)(4) provides that the department may prescribe additional security measures on a case-by-case basis as a permit condition upon a determination that a particular facility cannot feasibly comply with the security requirements of the subchapter or the security measures contemplated or in place are not sufficient to minimize risk of escape, release, or discharge or impacts to native species and ecosystems. The new provision is necessary to address special situations in which customized security provisions are the only means of ensuring biosecurity and thus authorizing permitted activities to take place.

New §57.119(b) provides additional emphasis to the effect that facilities where water spinach is cultured are subject to the provisions of new §57.118, concerning Special Provisions--Water Spinach.

New §57.119(c) stipulates facility requirements for persons who operate or engage in operations at a commercial aquaculture facility under a controlled exotic species permit.

New §57.119(c)(1) requires permitted facilities to be designed to prevent escape, release, or discharge of controlled exotic species or unauthorized discharge of wastewater by means of appropriately designed and constructed screens, barriers, filters, recirculating aquaculture systems, or other methods that are approved by the department and that must be properly maintained at all times. The current rules (§57.129(b)) governing commercial facility infrastructure have been in place many years. The current rules specifically require the use of triple-screening at all facilities, which reflects an outmoded, one-size-fits-all approach to biosecurity. The current rules are based on a traditional facility layout of earthen ponds that drain through harvest structures into canals and then into public waters. However, not all facilities employ this model and appropriate biosecurity measures may vary. There are measures other than screening that are capable of providing efficacious biosecurity. For example, triple-screening is not useful at facilities that do not discharge wastewater or that make use of sand filtration systems. The new subsection restricts the applicability of the current requirement regarding screens to only those facilities that actually employ screens for purposes of biosecurity and creates an additional regulatory structure to afford flexibility to evaluate each facility on a case-by-case basis to develop and implement appropriate measures to prevent escape, release, or discharge of controlled exotic species, which be specified in the conditions of the permit. The new paragraph also specifies that all screens, barriers, or other approved devices intended to prevent escape, release, or discharge be properly maintained at all times, which is a provision of current §57.119(j).

New §57.119(c)(2) prescribes facility requirements to prevent escape, release, or discharge of controlled exotic species at commercial facilities subject to the new rules.

New §57.119(c)(2)(A)) specifies that if a facility employs screening for purposes of biosecurity, the mesh size of screening must be capable of preventing the passage of controlled exotic species at the smallest life stage present in the facility at the time of discharge. Current §57.129(b)(1) requires that mesh be "of an appropriate size for each stage of exotic species growth and development." The new subparagraph make clear that mesh size at any given time is predicated on the life stage of the controlled exotic species in the facility at the time of discharge, which is necessary to prevent misunderstandings that could result in the use of inappropriate mesh sizes and possible escapement.

New §57.119(c)(2)(B) requires that screens be redundant or otherwise designed and constructed such that the level of protection, as determined by the department, against escape, release, or discharge of controlled exotic species is not reduced if a screen is damaged or must be removed to accomplish cleaning, repair, or other maintenance. Current §57.129(b) specifies that a minimum of three screens be in place between any point in the aquaculture facility and the point of discharge from the facility. Additionally, current rules (§57.129(b)(2) and (3)) require the permanent affixation of a screen and backing material in front of the final discharge pipe in the harvest structure to remain in place while the pond is in use, that screens at facilities discharging into public waters be secured over the terminal end of the discharge pipe at all times, that a second screen be secured over the terminal end of the discharge pipe during harvest, and double screening of the point of discharge of all mechanical harvesting devices. As mentioned previously in this preamble, the current rules do not afford the flexibility to accommodate different modalities of effective biosecurity infrastructure. The department has determined that the installation of three screens may not be necessary or feasible at facilities where screens are only one component of an effective biosecurity strategy and that permanent affixation of screens poses difficulties for periodic cleaning necessary to ensure proper function. Similarly, the department has determined that the terminal end of a pipe is often difficult to access and that installation of screens at different points in the drainage system can be just as if not more effective because those locations are easier to access for maintenance. Therefore, the new paragraph eliminates specific infrastructure specifications in favor of a generalized requirement that screens be redundant or otherwise designed and constructed such that the level of protection against escape, release, or discharge of controlled exotic species is not reduced if a screen is damaged or must be removed to accomplish cleaning, repair, or other maintenance. The intent of the new paragraph is to allow greater flexibility to the regulated community for the selection and deployment of effective biosecurity measures by establishing a general standard and approving such measures on a case-by-case basis. Additionally, the new paragraph requires wastewater discharged from a facility to be routed through all screens in accordance with department approval prior to the point where wastewater leaves the facility, which restates a provision of current §57.119(k) to clarify that water cannot be diverted during discharge events in any way so as to bypass screens or locations where screens should be in place.

New §57.119(c)(3) prescribes biosecurity measures for facilities located in the 100-year floodplain and is a nonsubstantive revision of current §57.129(c).

New §57.119(c)(4) prescribes specific additional facility requirements for commercial aquaculture facilities that are part of a facility complex. A facility complex is a group of two or more facilities located at a common site and sharing water diversion or drainage structures. There are several facilities in Texas that are independent commercial entities with shared infrastructure.

New §57.119(c)(4)(A) requires each permit holder at a facility complex to maintain at least one screen or barrier capable of preventing the escape, release, or discharge of controlled exotic species into a common drainage and have authority to stop the discharge of wastewater from the entire complex in the event of escape, release, or discharge of controlled exotic species from the permit holder's facility. The provisions of the new subparagraph are provisions of current rule §57.129(f)(1) and (2).

New §57.119(c)(4)(B) stipulates the placement and content of signage to be installed at each of the permit holder's ponds or components within a facility complex. The signage required by the new provision must be legible, bear the name and permit number of the permit holder, be within 10 feet of the authorized pond or other facility component, and correspond to the location of the component as indicated on the map provided to the department as part of the permit application and facility approval/reapproval process. The new subparagraph is necessary to allow the department to quickly and easily distinguish the ponds and components belonging to a given permit holder from other ponds and components within a facility complex for purposes of administration, enforcement, and emergency response.

New §57.120, concerning Facility Wastewater Discharge Requirements, consists of the contents of current §57.134 (relating to Wastewater Discharge Authority) with nonsubstantive revisions to enhance clarity and readability. Subsection (a) of the current rule requires applicants for an initial permit to provide documentation of either authorization for or exemption from appropriate wastewater discharge requirements of the Texas Commission on Environmental Quality (TCEQ) or documentation adequate to demonstrate that the facility is designed and will be operated in a manner such that no discharge of waste into or adjacent to water in the state will, or is likely to occur. Subsection (b) of the current rule establishes provisions for applications for permit amendments and renewals, requiring either written documentation demonstrating that the applicant possesses or has timely applied for and is diligently pursuing the appropriate authorization or exemption from TCEQ in accordance with the Texas Pollutant Discharge Elimination System (TPDES) General Permit for concentrated aquatic animal production facilities TXG 130000, if the facility is designed such that a discharge of waste into or adjacent to water in the state will, or is likely to occur; or adequate documentation to demonstrate that the facility is designed and will be operated in a manner such that no discharge of waste into or adjacent to water in the state will, or is likely to occur. The new rule eliminates duplication and clarifies that documentation related to wastewater discharge and associated permits is only required for permit renewal or amendment for a facility or facility complex designed such that a discharge of waste into or adjacent to water in the state will, or is likely to occur.

New §57.121. Transport of Live Controlled Exotic Species, sets forth rules regarding the transport of controlled exotic species.

New §57.121(a) prohibits any person other than the holder of a controlled exotic species permit holder, an employee of the permit holder, a common carrier acting on their behalf, or a private pond owner transporting tilapia or triploid grass carp to a private pond for stocking purposes from transporting live controlled exotic species and prescribes the documentation requirements for such transport. Permit holders and employees of permit holders be required to possess a copy of the permit and a properly executed transport invoice. A private pond owner transporting tilapia or triploid grass carp be required to possess a properly executed transport invoice (if the fish were obtained from the holder of a controlled exotic species permit holder) or an aquatic product transport invoice as required by Parks and Wildlife Code, §47.0181 (if obtained from a lawful out-of-state source), and, for triploid grass carp, a copy of the department permit authorizing the stocking of triploid grass carp and documentation that the grass carp have been certified as triploid by the Grass Carp Inspection and Certification Inspection Program operated by the U.S. Fish and Wildlife Service. With respect to controlled exotic species being transported by common carrier, the new subsection requires possession of documentation of compliance with all applicable local source and destination, federal, and international regulations and statutes for shipments transported by aircraft from inside Texas to a point outside Texas and not moved overland within the state; otherwise, each shipment be required to be accompanied by a properly executed transport invoice obtained from the controlled exotic species holder from whom the shipment originated, and, for triploid grass carp obtained from a lawful out-of-state source transported to a private pond for stocking purposes, a copy of the department permit authorizing possession of the carp, the aquatic product transport invoice required by Parks and Wildlife Code, §47.0181, and documentation that the grass carp have been certified as triploid by the Grass Carp Inspection and Certification Inspection Program operated by the U.S. Fish and Wildlife Service. Various provisions of current rules (§57.115, §57.116) make the transport of exotic species without either a permit or a transport invoice unlawful, with specific exceptions for persons transporting Mozambique tilapia or triploid grass carp for use in private ponds, and prescribes the content of the transport invoice. The new subsection preserves the effect of those provisions while noting the applicability of Parks and Wildlife Code, §47.0181, which requires persons other than commercial fishing license holders transporting aquatic products for a commercial purpose without an invoice as prescribed in that statute.

New §57.121(b) references the transport requirements for water spinach prescribed elsewhere in the new rules and discussed earlier in this preamble.

New §57.121(c)(1) stipulates that a separate controlled exotic species transport invoice be generated by the permit holder for each delivery location in advance of transport (except as provided otherwise in the new rules and discussed earlier in this preamble) and accompany the controlled exotic species during transport. The department has determined that the current rule (§57.116(a)) does not adequately convey that intent.

New subsection (c)(2) prescribes the contents of a controlled exotic species transport invoice, which consist of information identifying the date of the shipment, the size and biological identity of the contents being shipped, the contact information and permit numbers, if applicable, of the source and destination of the shipment, and the type of transport. Current §57.116 prescribes the content of the transport invoice. The new subsection preserves the effect of those provisions while noting the applicability of Parks and Wildlife Code, §47.0181, which requires persons other than commercial fishing license holders transporting aquatic products for a commercial purpose without an invoice as prescribed in that statute.

New §57.121(d) sets forth the transport invoice requirements for the shipment of controlled exotic species from outside of Texas via a route through Texas to a point outside Texas. Under current rule (§§57.130 - 57.133), the transport of live exotic species originating outside the state of Texas through Texas to a destination outside of the state of Texas is prohibited except by the holder of an exotic species permit or an exotic species interstate transport permit. The current rules also require anyone transporting live harmful or potentially harmful exotic species to possess documentation accounting, collectively, for all such species being transported and provides for application, fee, and issuance processes. The new subsection preserves the requirements of current rule while adding provisions allowing for such a permit to be valid for either a single use or for one year. The new subsection also establishes the deadline for application before the initial instance of transport and sets forth specific obligations for a person transporting controlled exotic species under an interstate transit permit, all of which are provisions of the current rules at §§57.130 - 57.133. The new provision specifically stipulates a notification requirement of at least 24 hours prior to each intended transit and prescribes the contents of the notification. Current §57.132(c) requires notification by fax at least 72 hours prior to transit. The new subsection requires notice to accompany an application for a singleuse permit and at least 24 hours prior to each intended transit under an annual transit permit. The required notice consists of the dates and times that the permit holder expects to enter and depart the state, the common and scientific names of each controlled exotic species to be transported, the quantity of each controlled exotic species to be transported, the specific points of origin and destination of each controlled exotic species being transported, the specific route the transport will follow, including the locations where the transporter will enter and depart the state of Texas, a description of the make, model, and color of the vehicle, trailer, or other conveyance to be employed in transport and license plate numbers; and the name, driver's license number, and contact numbers of the driver or contact information for the commercial shipper transporting the controlled exotic species through the state of Texas, all of which the department has determined are necessary to enable the department to provide proper biosecurity for threats to natural systems and organisms by being able to monitor the transport of controlled exotic species across the state.

The new section eliminates several provisions of current rules in the interests of reducing regulatory complexity. The requirement of current rule that each transport invoice be submitted to the department, which the department has determined to be administratively problematic, is eliminated. The department has determined that current rules regarding possession and retention of transport invoices are sufficient for purposes of enforcement and compliance, given the department's inspection authority under current statute and rule. Similarly, the requirements of current §§57.116(a) that require the permit holder to include an invoice number that is unique, sequentially numbered, and not used more than once during any permit period is eliminated, because the department has determined that invoice numbers are not necessary to ensure compliance with transport invoice requirements.

Current §57.116(a) requires the transport invoice to include name, address, phone number, aquaculture license number, and controlled exotic species permit number, if applicable, for the "shipper." However, the intent of the rule is that contact information for the seller be provided; new §57.121(c)(2)(B) specifies that information must be provided for the "controlled exotic species permit holder from whom the controlled exotic species was obtained." Furthermore, the new section does not require the aquaculture license number of the permit holder because possession of a valid aquaculture license is a prerequisite for the controlled exotic species permit, the number of which must be provided.

Current §57.116(a) stipulates that information required for the receiver include the address of the receiver as well as the address of the destination of the exotic species, if different. New §57.121(c)(2)(C) specifically requires only the physical address where the controlled exotic species will be possessed if different from the mailing address; post office box addresses are specifically prohibited because the department must be informed as to the physical location where fish might be stocked. The new provision also requires that the destination county be included on the transport invoice to facilitate compliance with, and enforcement of, new §57.115(d)(3) and (e), concerning sales of tilapia for stocking in private ponds in counties within the conservation zone.

Current §57.116(a) stipulates that information required for the species being transported include number and total weight for each species. New §57.121(c)(2)(D) clarify that both the common and scientific name of the species are required. Common names are highly variable and thus pose difficulties with interpretation for enforcement personnel, whereas scientific names are unequivocal; however, including both is needed to aid in interpretation if scientific names are erroneous. The new rule also requires additional information concerning the number and total weight for each species by requiring number or weight, by size class. Fry and fingerlings are often sold by number, with weight unknown, whereas adult fish are often sold by the pound. Redundant count and weight information is not necessary for evaluating compliance; thus, requiring both weight and number on the invoice is unnecessary.

New §57.122, concerning Permit Application, Issuance, and Period of Validity, sets forth procedures to be followed by an applicant for a permit under the subchapter. The new section is a consolidation of provisions from various sections of current rules §57.117, concerning Exotic Species Permit: Application Requirements; §57.118, concerning Exotic Species Permit Issuance; §57.120, concerning Exotic Species Permit: Expiration and Renewal; and §57.125, concerning Triploid Grass Carp Permit: Application, Fee.

New §57.122(a) provides a crossreference to the application, issuance, and permit period of validity standards for interstate transport permits contained in new §57.121, concerning Transport of Live Controlled Exotic Species.

New §57.122(b) prescribes the conditions for applications for controlled exotic species permits other than for interstate transit, which are located in current §57.117(b) and (c).

New §57.122(b)(1) establishes a permit application submission deadline of 30 days prior to any prospective activity involving controlled exotic species, which is necessary to ensure adequate time for permit application review, facility inspections, and permit issuance.

New §57.122(b)(2) prescribes the specific information required by and contained in the application form, which is necessary for the department to assess the prospective activities and determine suitability for permit issuance.

New §57.122(b)(2)(D) provides for the specific instances for which the department waives fees for applications, all of which are provided for in current rule.

New §57.122(b)(3) prescribes additional required documentation. New subparagraph (A) clarifies that a copy of aquaculture or fish farm vehicle licenses required by the Texas Department of Agriculture (TDA) must be submitted with the permit application. Current §57.117(a)(1)(A) requires possession of an aquaculture license to be considered for an exotic species permit for aquaculture.

New subparagraph (B) requires applicants for commercial aquaculture facility permits to submit the documentation required by new §57.120, concerning Facility Wastewater Discharge Requirements, which is a requirement of current §57.134, concerning Wastewater Discharge Authority.

New §57.122(b)(3)(C) requires applicants for a permit to possess, transport, and dispose controlled exotic species of plants to submit the treatment proposal required by §57.932, concerning State Aquatic Vegetation Plan, which is necessary for the department to ensure that the applicant is compliance with the statutory requirements of Parks and Wildlife Code, §11.082, which mandates a state aquatic vegetation management plan.

New §57.122(b)(3)(D) requires submission of a facility map along with the permit application for commercial aquaculture facility permits, biological control production permits, zoological display or research permits with outdoor holding facilities, or limited special purpose permits for wastewater treatment. Current rules require an accurate-to-scale plat map; for smaller facilities, particularly those using recirculating aquaculture systems that consist of only small tanks, this requirement is cost-prohibitive. To provide greater flexibility to the regulated community, the new provisions allow for labeled, accurate maps or aerial photographs of the facility and only requires professionally surveyed maps for facilities within the 100-year floodplain that are constructed in such a way that escape might occur during flooding (e.g., outdoor, earthen ponds). The new rules also provide that maps are required for zoological display or research permits only when the application is for outdoor holding facilities, which is necessary for the department to evaluate the potential for escape of controlled exotic species.

New §57.122(b)(3)(E) consists of the revised content of current §57.117(d), concerning emergency plans. Current rules require emergency plans only for facilities located in the exotic shrimp exclusion zone. The new provision requires an emergency plan for all facilities, which the department has determined is necessary to ensure that appropriate measures are in place to prevent escape, release, or discharge of controlled exotic species into public water during a natural event such as a hurricane or flood. The rule also requires that the approved emergency plan be posted and maintained on file at the facility to ensure all staff members are familiar with and prepared to implement the plan, which is necessary to ensure the biosecurity of all facilities during such natural events and prevent inadvertent introductions of controlled exotic species into public waters.

New §57.122(b)(3)(F) requires submission of a research proposal by applicants for permits to conduct scientific research involving controlled exotic species and documentation of the qualifications of the applicant to conduct controlled exotic species research. Current rule requires only that an applicant have a department-approved research proposal to be considered for permit issuance. The department has determined that it is necessary to ensure that research permits are issued only to persons qualified to conduct scientifically valid research that will legitimately contribute to the knowledge, prevention, impact assessment/mitigation, and management of controlled exotic species.

New §57.122(b)(3)(G) establishes additional requirements for permits to culture controlled exotic species of plants as hosts for the purposes of production of biological control agents. The new provision requires submission of a biological control plan addressing the number of biological control agents to be collected from private waters, expected production of controlled exotic species of plants, and the intended use of and stocking locations for the biological control agents. The new provision is necessary to accommodate emerging technologies and methods to control exotic species.

New §57.122(c) sets forth the conditions under which the department issue a permit. Under current rule, the department may issue a permit when all application requirements of the rules have been met; the aquaculture facility operated by the applicant meets or will meet the design criteria stipulated in the rules, and the applicant has complied with all provisions of the Parks and Wildlife Code, §§66.007, 66.0072, and 66.015, and the subchapter during the one-year period preceding the date of application. The new subsection consolidates these provisions with other provisions regarding facility requirements (current §57.119 and §57.129) and inspection (current §57.119 and §57.125).

New §57.122(d) consists of the provisions of current §57.120(a) regarding the period of permit validity, altered to include an exception for activities authorized under §57.932, concerning State Aquatic Vegetation Plan, discussed earlier in this preamble.

New §57.123, concerning Permit Amendment and Renewal, prescribes the processes and requirements for amending and renewing permits issued under the subchapter. The new section is a consolidation of provisions from various sections of current §57.120, concerning Exotic Species Permit: Expiration and Renewal.

New §57.123(a) clarifies the requirements of current §57.119(m), which states that permits are not transferrable from site to site. The revised provision stipulates that a permit is valid only for the facility for which it issued and will not be amended to authorize activities at any other location or facility.

New §57.123 (b) enumerates specific activities that are prohibited without receiving an amended permit from the department. Current §57.121(b) requires an exotic species permit to be amended before a permittee may add or delete species of harmful or potentially harmful exotic fish, shellfish, or aquatic plants held pursuant to the permit; redistribute harmful or potentially harmful fish, shellfish, and aquatic plants into private facilities not authorized in the permit; change methods of preventing discharge of harmful or potentially harmful exotic fish, shellfish, and aquatic plants; change discharge of private facility effluent from aquaculture facilities or wastewater treatment facilities; or change an existing approved facility design. The new subsection simplifies and restates the current list of activities, adds a provision prohibiting the transfer of managerial or supervisory responsibilities to anyone other than the current permit holder, and specifically states that the activities are prohibited unless an amended permit has been received from the department. The new provision regarding transfer of supervisory or managerial responsibility is necessary to ensure that persons operating under a permit meet the requirements of the new rules for permitted activities.

New §57.123(c) provides for amendment or renewal of a permit provided the applicant has submitted an application for amendment or renewal at least seven days prior to transfer of managerial or supervisory responsibilities to a new person (if applicable); submitted the appropriate fee (if required) by the department; has complied with all permit provisions; and demonstrates that the facility is operated and maintained in a manner such that no escape, release, or discharge of controlled exotic species into public water or into facility ponds or drainage structures not meeting minimum facility requirements will or is likely to occur. Current §57.120(b) provides for the renewal of an exotic species permit upon finding that the applicant has met specified application requirements, the facility will meet all applicable facility design criteria, the applicant has complied with all provisions of the Parks and Wildlife Code, §§66.007, 66.0072, 66.015, and the subchapter during the one-year period preceding application for renewal; and the applicant has submitted a renewal application and all required annual reports. Current §57.121(a) provides that an exotic species permit may be amended provided the applicant has complied with all provisions of the Parks and Wildlife Code, §§66.007, 66.0072, 66.01, all provisions of the permit and the subchapter during the one-year period preceding the date of application; the applicant has met all applicable application requirements; and the facilities as altered will meet the required facility criteria. The new subsection allows for permit amendment or renewal upon finding that the applicant has submitted a written request for permit amendment or application for renewal prior to permit expiration or seven days prior to transfer of managerial or supervisory responsibilities; submitted the required fee; complied with all permit provisions; met minimum facility requirements (if applicable); and operated and maintained the facility in a manner such that no escape, release, or discharge of controlled exotic species into public water or into facility ponds or drainage structures not meeting minimum facility requirements will or is likely to occur.

New §57.123(d) introduces a new provision allowing for commercial aquaculture permits to be renewed for a period of greater than one year. Current §57.120(a) stipulates that all permits expire on December 31 of the year of issuance. The new section allows renewal of commercial aquaculture permits for a period of one, three, or five years provided the permit holder had complied with all provisions of this subchapter for a period equivalent to the renewal period. The new provision is intended to reduce the burden of permit administration on the department and the regulated community.

New §57.124, concerning Refusal to Issue; Review of Agency Decision to Refuse Issuance, consists of revised selected content from current §57.118, concerning Exotic Species Permit Issuance); §57.122, concerning Permit Denial Review; and §57.127, concerning Triploid Grass Carp Permit; Denial.

New §57.124(a)(1) provides for the department to refuse issuance or renewal, as applicable, of a permit to any person or for any facility if the department determines that a prospective activity constitutes a threat to native species, habitats, or ecosystems or is inconsistent with department management goals and objectives. Although numerous provisions of the new rules function individually and collectively to define the contexts or situations in which the department could refuse to issue or renew a controlled exotic species permit, the new section is a single statement of that authority.

New §57.124(a)(2) provides for refusal to issue, amend, or renew a controlled exotic species permit for any person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication, or been assessed an administrative penalty for a violation of: Parks and Wildlife Code, §§66.007, 66.0072, or 66.015; a provision of the Parks and Wildlife Code that is a Class A or B misdemeanor or felony; Penal Code, §37.10; the Lacey Act (16 U.S.C. §§3371-3378): or a violation of federal law applicable to grass carp. In addition, the new section allows the department to refuse permit issuance, amendment, or renewal to another person employed, authorized, or otherwise utilized to perform permitted activities by the applicant has been convicted of, pleaded guilty or nolo contendere to, or received deferred adjudication or pre-trial diversion for one of the listed offenses listed in the section and allow the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit.

The department has determined that the decision to issue a permit to hold controlled exotic species should take into account an applicant's history of violations involving harmful or potentially harmful fish, shellfish, and aquatic plants, major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), violations of Penal Code, §37.10 (which creates the offenses relating to falsification and tampering governmental records), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of possessing controlled exotic species for any purposes to persons who exhibit a demonstrable disregard for agency regulations. Similarly, it is appropriate to deny the privilege of holding wildlife to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of conservation law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported, or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government needs only to prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing to issue or renew a permit or allow a person so convicted to engage in permitted activities as an employee or assistant of a permittee. Because the elements of the underlying state criminal offense must be proven to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

A department action taken as a result of an adjudicative status listed in the new section would not be automatic but be within the discretion of the department. Factors that may be considered by the department include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the cur-

rent time; whether the final conviction, administrative violation, or other offenses or violations were the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent or employee of the applicant, or both; the accuracy of information provided by the applicant or employee of the applicant; whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

The new subsection also allows the department to deny permit renewal to any person not in compliance with applicable reporting or recordkeeping requirements, which is authorized under the provisions of current §57.120.

Additionally, the new provision also provides for department determination of the duration of denial or refusal under the new rules, not to exceed five years. The department does not intend for a refusal to issue or renew permit or disqualification for participation in permitted activities to be permanent; therefore, the new subsection allow the flexibility to impose a specific duration of denial, not to exceed five years.

New subsection (b) recapitulates the provisions of current §57.122, concerning Permit Denial Review, with several substantive changes. The current rule requires the department to conduct a review within 10 days of receiving a request for review. The new subsection requires the department to establish a date and time for the review within 10 working days of receiving a request for review and requires the department to conduct the review within 30 days of the date of request, unless another date is selected by mutual agreement. The new subsection also eliminates references to the specific titles of review panelists and instead simply requires panelists to be agency managers with relevant experience or knowledge.

New §57.125, concerning Reporting, Recordkeeping, and Notification Requirements, establishes the requirements for permit holder with respect to required records, reports, and notifications.

New §57.125(a) provides a cross-reference to new §57.118, concerning Special Provisions--Water Spinach, which prescribes the reporting, recordkeeping, and notification requirements for holders of water spinach culture facility permits.

New §57.125(b) prescribes reporting requirements for various classes of controlled exotic permit holders. Current §57.123(a) requires permit holders to account for importation, possession, transport, sale, transfer, or other disposition of any harmful or potentially harmful exotic species handled by the permittee, which in general provide useful information to the department but do not address the nuances of the various types of controlled exotic species permits currently issued or contemplated by the new rules. The new section would, among other things, tailor reporting requirements for the various classes of permits in order to provide the department with pertinent information and relieve permit holders, where possible, from having to track and report data that is irrelevant to the interests of the department.

New §57.125(b)(1) requires all reports to be submitted on department forms or in a format prescribed by the department, as applicable, which is an express or implied requirement of current rules regarding reports throughout the subchapter.

New §57.125(b)(2) requires annual reports to be submitted by January 31 of the year following the calendar year for which the permit was issued. The current deadline is January 10; however, the department believes that moving the deadline to a later date will facilitate compliance and administration by reducing time management conflicts resulting from the holiday season.

New §57.125(b)(3)(A) consists of the contents of current §57.123(a), with a clarification of the requirements for commercial aquaculture facility permit holders to the effect that reports must account for the quantity or weight of the controlled exotic species for each reportable activity, which is necessary for consistency with the requirements of new §57.121 discussed earlier in this preamble.

New §57.125(b)(3)(B) exempts holders of a commercial aquaculture facility permit authorizing aquaculture and sale of tilapia from the annual reporting requirement, which is necessary because tilapia are able to reproduce in captivity, which makes population calculations problematic if not impossible.

New §57.125(b)(4) establishes the annual reporting requirements for holders of controlled exotic species permits for biological control production. The annual report for this class of permit holder consists of values for host plant production, biological control agent production, number and locations of introduced organisms, collections and introductions, and number of sales if applicable, which is necessary for the department to effectively monitor activities with the potential to result in negative consequences for native organisms and ecosystems in the event or escape or release.

New §57.125(b)(5) prescribes the annual reporting requirements for the holders of a research permit. Researchers will be required to provide a description of research activities conducted for each species listed on the permit rather than the information required under current §57.123(a). The department has determined that the most useful information with respect to research activities is the extent to which the research benefits indigenous species or ecosystems and/or provides insight on ecology, risks, impacts, or management approaches for controlled exotic species.

New §57.125(b)(6) establishes the annual reporting requirements for the holders of a controlled exotic species permit authorizing zoological display. The new rule requires a permit holder to account for all controlled species in possession, obtained, transferred, or dispatched during the permit year, which be less burdensome than the current standard and more consistent with the parameters of zoological display activities.

New §57.125(b)(7) establishes the annual reporting requirements for various types of limited special purpose controlled exotic species permits.

New subparagraph (A) provides that the annual reporting requirements for persons holding a permit authorizing triploid grass carp sale for private pond stocking be the same as the reporting requirements for commercial aquaculturists under new §57.125(b)(3)(A), consisting of the total quantity or weight of triploid grass carp for all instances of purchase, transfer, sale, importation, exportation, or other disposition during the permit period. New subparagraph (B) waives annual reporting requirements for all other types of limited special purpose permits except as otherwise provided by permit conditions for permits issued for possession, transport, and disposal activities not otherwise authorized by the provisions of new §57.113, concerning General Provisions and Exceptions as provided in §57.114(f)(6), concerning Controlled Exotic Species Permits.

New §57.125(c) prescribes the recordkeeping requirements for various classes of controlled exotic permit holders other than

controlled exotic species permits for water spinach. New paragraph (1) requires the holder of a permit issued under the subchapter to maintain at the facility or record-keeping location and, upon the request of any department employee acting within the scope of official duties during normal business hours, promptly make available for inspection copies of transport invoices for the previous one year, permits or other records required by the subchapter, and documentation of current permits or authorizations required by the TDA and TCEQ. Current §57.119(a) requires a copy of the permit to be made available for inspection. The department has determined that the rules should also address required records and reports, which is also addressed in the requirements of new §57.113(o)(3).

New §57.125(d) prescribes the notification requirements for various classes of controlled exotic permit holders other than controlled exotic species permits for water spinach.

New §57.125(d)(1) provides a cross-reference to other provisions of the new rules that prescribes notification requirements for limited special purpose permits for interstate transport transit.

New §57.125(d)(2) requires permit holders to notify the department within 24 hours of discovering the escape, release, or discharge of controlled exotic species. Under current rule (§57.119(i)), a permit holder is required to notify the department within two hours of discovering the escape, release, or discharge of exotic species. The department has determined that in a notification is not meaningful unless it represents the results of a thorough assessment of an event and that two hours is insufficient for the execution of such an assessment; therefore, the new rule requires notifications to be made 24 hours following discovery of escape, release, or discharge from a facility or during transport.

New §57.125(d)(3) requires a permit holder to notify the department in the event that a facility or facility complex appears to be in imminent danger of overflow, flooding, or other circumstance that could result in the escape, release, or discharge of controlled exotic species into public water and begin implementation of an emergency plan, which is a provision of current rule under §57.119(e).

New §57.125(d)(4) requires the holder of a permit for controlled exotic species of shrimp to notify the department at least 72 hours prior to, but not more than 14 days prior to harvesting shrimp held under a permit, which is a provision of current rule under §57.119(f).

New §57.125(d)(5) requires the holder of a commercial aquaculture facility permit to notify the department not less than 72 hours prior to any instance of the import or export of triploid grass carp. The notification must include the number of grass carp being purchased, the source of grass carp, the ploidy level of grass carp, the final destination of grass carp, the name of the certifying authority who conducted triploid grass carp certification, and the name, address, and exotic species permit number and aquaculture license number (as applicable) of both the transporter and the receiver. With the exception of the reporting of ploidy level, the new section consists of the provisions of current §57.124, concerning Triploid Grass Carp; Sale, Purchase. The department has determined that ploidy data is necessary to appropriately assess activities that have the potential to negatively impact native organisms and ecosystems.

New §57.125(d)(6) specifies the notification requirements of the new rules that apply to prospective modifications of commercial aquaculture facilities, zoological display or research facilities (when live controlled exotic species are possessed), and biological control production facilities. The affected permit holders are required to notify the department at least 14 days prior to any modifications that affect methods of preventing escape, discharge, release, discharge of water/wastewater/waste, or required facility infrastructure. As part of the required notification, permit holders be required to provide photographs, maps, and diagrams of the prospective modifications. The new paragraph also provide for inspection at the department's discretion, which is a restatement of existing inspection authority under current §57.119(b) and numerous other provisions of the new rules.

New §57.126, concerning Discontinuation of Permitted Activities; Sale or Transfer of Permitted Facility, sets forth the powers of the department with regard to compelling a permit holder to cease permit activities and prescribing remedial or terminal directives to prevent or minimize threats to native organisms or ecosystems.

New §57.126(a) establishes the department's authority to order a permit holder in writing to cease possession, importation, exportation, sale, purchase, transportation, propagation, or culture of controlled exotic species and prescribes a disposition protocol in accordance with the provisions of new §57.113(m), concerning General Provisions and Exceptions. The new subsection provides for three circumstances under which cessation of permit activities could be ordered by the department. First, cessation could be ordered if the department determines that there is an imminent risk of escape, release, or discharge of controlled exotic species. Second, cessation could be ordered if a required permit, license, authorization, or exemption is revoked or suspended by the TCEQ or the TDA. Third, cessation could be ordered if any of the required permits, licenses, authorizations, or exemptions have expired or are otherwise no longer valid. The department has determined that the enumerated circumstances represent situations in which the intervention of the department is critical to prevent damages to public resources.

New §57.126(b) prescribes the actions required of a permit holder in the event that the permit holder no longer desires to engage in permitted activities. The new subsection requires permit holders who intend to discontinue permitted activities to notify the department of that intent at least 14 days prior to discontinuation of permitted activities or permit expiration. Current §57.119(c) requires the immediate lawful sale, transfer, or destruction of all controlled exotic species in the permit holder's possession and notification of the department within 14 days of cessation of permitted activities. The new subsection eliminates the current requirement for immediate destruction or transfer of inventory in possession upon discontinuation and replaces it with a requirement that such destruction or transfer be effected to prior to permit expiration date or the expected date that permitted activities cease, as reported to the department. The rule also stipulates that a final report that is compliant with the provisions of new §57.125 must submitted to the department within 30 days of discontinuation of activities.

New §57.126(c) sets forth the actions required of a permit holder in the event that the permit holder intends to sell a facility and controlled exotic species within the facility. The new subsection requires permit holders who intend to sell a permitted facility to notify the department of that intent at least 14 days prior to the expected closing date and again, in writing, with 72 hours of finalizing the sale. Current §57.119(l) requires immediate notification of the department in the event of a change of ownership of a permitted facility. Rather than requiring immediate notification, the

new subsection requires notification of intent to sell at least 14 days in advance of expected closing date to ensure the department is prepared to accommodate transitional operation needs in accordance with the provisions of new §57.126(d). The new subsection also requires the permit holder to notify the department within 72 hours of finalizing the sale of the facility, which include the name, address, and phone number of the purchaser.

New §57.126(d) provides for the transitional operation of a facility for the period of time between a change in ownership and the acquisition of a valid controlled exotic species permit by the new owner. The new subsection allows permitted operations to continue provided the facility is in compliance with the provisions of the subchapter, the new owner has submitted an application for a controlled exotic species permit and has obtained or is in the process of obtaining required TCEQ and TDA permits, and the department has authorized continued operation in writing, pending approval or denial of permits required by TCEQ and TDA. In the case of commercial aquaculture, existing stocks may be sold to the new owner along with the facility. The new provision is intended to facilitate changes in ownership with minimal disruptions while continuing to ensure lawful operation.

New §57.127, concerning Memorandum of Understanding between the Texas Parks and Wildlife Department, the Texas Commission on Environmental Quality, and the Texas Department of Agriculture, consists of the contents of current §57.135, which is being relocated for organizational purposes.

New §57.128, concerning Violations and Penalties, consists of the provisions of current §57.137, concerning Penalties, retitled to clarify that the section applies to violations as well as penalties and reworded to specifically tie the penalties for criminal conduct to the actions of a person.

The department received no comments opposing adoption of the rules as proposed.

The department received five comments supporting adoption of the rules as proposed.

31 TAC §§57.112 - 57.128

The repeals are adopted under the authority of Parks and Wildlife Code, §66.007, which authorizes the department to make rules necessary to authorize the import, possession, sale, or introduction of harmful or potentially harmful exotic fish.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2021.

TRD-202100111
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: January 27, 2021
Proposal publication date: September 25, 2020
For further information, please call: (512) 389-4775

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31 TAC §§57.111 - 57.128

Statutory authority

The amendment and new rules are adopted under the authority of Parks and Wildlife Code, §66.007, which authorizes the department to make rules necessary to authorize the import, possession, sale, or introduction of harmful or potentially harmful exotic fish.

§57.125. Reporting, Recordkeeping, and Notification Requirements.

(a) Reporting, recordkeeping, and notification requirements for holders of water spinach culture facility permits are described in §57.118 of this title (relating to Special Provisions--Water Spinach).

(b) Reporting requirements.

(1) All reports will be submitted on department forms or in a format prescribed by the department, as applicable.

(2) All annual reports for permits other than for water spinach shall be due by January 31 of the year following the calendar year for which the permit was issued.

(3) Commercial aquaculture facility.

(A) The holder of a commercial aquaculture facility permit authorizing aquaculture and sale of controlled exotic species of shrimp or triploid grass carp shall submit to the department an annual report that accounts for the total quantity or weight of controlled exotic species of shrimp or triploid grass carp for all instances of purchase, transfer, sale, importation, exportation, or other disposition of any controlled exotic species during the permit period.

(B) The holder of a commercial aquaculture facility permit authorizing aquaculture and sale of tilapia is not required to submit an annual report for the tilapia.

(4) Biological control production. The holder of a permit for biological control production shall submit to the department a report of host plant production, biological control agent production, number and locations of collections and introductions, and number of sales if applicable.

(5) Research. The holder of a permit for controlled exotic species research shall submit to the department a report describing the research activities conducted on all species listed on the permit.

(6) Zoological display. The holder of a permit for zoological display shall submit a report accounting for all controlled species in possession, obtained, transferred, or dispatched during the permit year.

(7) Limited special purpose permits.

(A) The holder of a limited special purpose permit for tilapia and triploid grass carp sale for private pond stocking issued under §57.114(f)(2) of this title (relating to Controlled Exotic Species Permits) shall submit to the department an annual report that accounts for total quantity or weight of triploid grass carp for all instances of purchase, transfer, sale, importation, exportation, or other disposition during the permit period.

(B) Holders of limited special purpose permits for possession, transport, and disposal activities not otherwise authorized by the provisions of proposed §57.113 (relating to General Provisions and Exceptions) may be required to submit a report to the department in accordance with permit conditions.

(C) Reports are not required for other limited special purpose permits.

(c) Recordkeeping requirements for permits. The holder of a permit issued under this subchapter shall maintain at the facility or record-keeping location, and upon the request of any department employee acting within the scope of official duties during normal business hours, promptly make available for inspection:

(1) copies of transport invoices for the previous one year, generated in accordance with §57.121 of this title (relating to Transport of Live Controlled Exotic Species);

(2) any other permit or records required by this subchapter; and

(3) documentation of current permits or authorizations required as a prerequisite for any permits issued under this subchapter and issued under the authority of:

(A) Water Code, Chapter 26; and

(B) Agriculture Code, Chapter 134.

(d) Notification requirements for permits.

(1) Notification requirements for limited special purpose permits for interstate transit are described in §57.121(d) of this title.

(2) The holder of a permit issued under this subchapter shall notify the department within 24 hours of discovering the escape, release, or discharge of controlled exotic species from their facility or during transport.

(3) In the event that a facility or facility complex subject to a permit issued under this subchapter appears to be in imminent danger of overflow, flooding, or other circumstance that could result in the escape, release, or discharge of controlled exotic species into public water, the permit holder shall immediately:

(A) begin implementation of the emergency plan approved by the department to prevent the escape, release, or discharge of controlled exotic species into public water; and

(B) notify the department in accordance with permit provisions.

(4) Except in case of an emergency, the holder of a controlled exotic species permit authorizing possession of controlled exotic species of shrimp must notify the department at least 72 hours prior to, but not more than 14 days prior to any harvesting of permitted shrimp. In an emergency, notification of harvest must be made as early as practicable prior to beginning of harvest operations.

(5) The holder of a commercial aquaculture facility permit must notify the department not less than 72 hours prior to any instance of the import or export of triploid grass carp. The notification must include:

(A) number of grass carp being purchased;

(B) source of grass carp;

(C) ploidy level of grass carp;

(D) final destination of grass carp;

(E) name of certifying authority who conducted triploid grass carp certification; and

(F) name, address, and exotic species permit number and aquaculture license number (as applicable) of both the transporter and the receiver.

(6) The holders of permits for commercial aquaculture facilities, zoological display or research facilities when live controlled exotic species are possessed, and biological control production facilities shall:

(A) notify the department at least 14 days prior to making modifications:

(i) to the methods of preventing escape, release, or discharge of controlled exotic species approved under the current permit provisions;

(ii) affecting the discharge of water, wastewater, or waste from a facility; or

(iii) to the required facility infrastructure set forth under the permit provisions or §57.119 of this title (relating to Minimum Facility Requirements).

(B) The permit holder must furnish to the department photographs and revised maps of modifications. The department may conduct an onsite inspection upon a determination that the nature of a prospective modification requires further investigation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2021.

TRD-202100112
James Murphy
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

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) adopts the following new subchapter to Chapter 800, relating to General Administration, without changes, as published in the October 23, 2020, issue of the *Texas Register* (45 TexReg 7545):

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

These rules will not be republished.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Senate Bill (SB) 1055, 86th Texas Legislature, Regular Session (2019), added Texas Labor Code, Chapter 317, 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.

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 adopts 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.

TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The public comment period ended on November 23, 2020. No comments were received.

PART IV.

STATUTORY AUTHORITY

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 implement the requirements of Texas Labor Code, Chapter 317.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 5, 2021.

TRD-202100065
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: January 25, 2021
Proposal publication date: October 23, 2020
For further information, please call: (512) 936-6478

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CHAPTER 803. SKILLS DEVELOPMENT FUND

Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 803, relating to the Skills Development Fund:

Subchapter A. General Provisions Regarding the Skills Development Fund, §803.1 and §803.2

Subchapter B. Program Administration, §803.11 and §§803.13 - 803.15

TWC adopts the following new section of Chapter 803, relating to the Skills Development Fund:

Subchapter A. General Provisions Regarding the Skills Development Fund, §803.4

The amendments to §§803.1, 803.11, 803.13, and 803.15, and new §803.4 are adopted *without changes* to the proposed text as published in the November 13, 2020, issue of the *Texas Register* (45 TexReg 8118). The rules will not be republished. The amendments to §803.2 and §803.14 are adopted *with changes* to the proposed text as published. The rules will be republished.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 803 rule changes is to implement statutory changes related to the Skills Development Fund (SDF) program.

House Bill (HB) 700, 86th Texas Legislature, Regular Session (2019), amended sections of Texas Labor Code, Chapter 303, relating to the SDF program. HB 700 amended Texas Labor Code, §303.001(a) to add Local Workforce Development Boards (Boards) to the list of entities that are eligible to use SDF grants as an incentive to provide customized assessment and training.

Additionally, HB 108, 85th Texas Legislature, Regular Session (2017), amended the Texas Labor Code to add §303.0031 regarding the use of SDF grants to encourage employer expansion and recruitment. Texas Labor Code, §303.0031 allows SDF grants to provide "an intensive and rapid response to, and support services for, employers expanding in or relocating their operations to this state, with a focus on recruiting employers that will provide complex or high-skilled employment opportunities in this state."

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 REGARDING THE SKILLS DEVELOPMENT FUND

TWC adopts the following amendments to Subchapter A:

§803.1. Scope and Purpose

Section 803.1(a) is amended to provide a broad statement on the purpose of the SDF. This language reflects the statutory purpose in the Texas Labor Code, §303.001 and includes business expansion and relocation purpose in the Texas Labor Code, §303.003. The amended language removes references to required partnerships for community-based organization as this eligibility requirement is described in §803.2.

Section 803.1(a) is also amended to add Boards to the list of entities eligible to receive SDF grants to provide customized assessment and training pursuant to Texas Labor Code, §303.001. TWC notes that Texas Government Code, §2308.264 prohibits Boards from directly providing workforce training or one-stop workforce services unless the Board requests and is approved for a waiver based on the lack of an existing qualified alternative for delivery of workforce services in the local workforce development area (workforce area). Texas Labor Code, Chapter 303 (as amended by HB 700) allows Boards to apply for and use SDF funds:

--as an incentive to provide customized training;

--to develop customized training; and

--to sponsor small and medium-sized business networks and consortiums for job training purposes.

Texas Labor Code, Chapter 303 does not state that Boards must provide the training directly and, therefore, does not conflict with Texas Government Code, §2308.264.

Section 803.1(a) is also amended to add "A&M" to complete the name of the Texas Engineering Extension Service, which reflects the language in Texas Labor Code, §303.001.

§803.2. Definitions

Definitions in §803.2 are amended as follows:

--Section 803.2(1) is amended to include a Board as a design partner in the definition of a "customized training project."

--Section 803.2(2) is added to define "eligible applicant."

--Section 803.2(3) is added to define "executive director."

--Subsequent definitions are renumbered accordingly to accommodate the added definitions.

--Section 803.2(4) is amended to include a Board in the definition of a "grant recipient."

--Section 803.2(6) is amended to remove "person" to alleviate any ambiguity or confusion with the word in the definition of "private partner." At adoption, "Boards" is added to the definition for clarification.

--Section 803.2(9) is amended to add "A&M" to the defined term "Texas Engineering Extension Service."

--Section 803.2(11) is amended to include a Board contractor in the definition of a "training provider."

In response to comment, §803.2(2) and (3) are added to define "eligible applicant" and "executive director" to clarify the use of those terms in adopted §803.14.

§803.4. Use of Funds to Encourage Employer Expansion and Recruitment

New §803.4 is added to implement Texas Labor Code, §303.0031, relating to the use of the SDF to support employers expanding in or relocating to Texas. The rule language reflects the statutory language in Texas Labor Code, §303.0031.

Section 803.4(a) reflects the statutory language in the Texas Labor Code that the SDF may be used to provide an intensive and rapid response to, and support services for, employers expanding in or relocating their operations to Texas, with a focus on recruiting employers that will provide complex or high-skilled employment opportunities in the state.

New §803.4(b) reflects the statutory language in the Texas Labor Code that the SDF grand funds may be used to:

--provide leadership and direction to, and connections among, out-of-state employers, economic development organizations, Boards, public community colleges, and public technical colleges to support employers' recruitment and hiring for complex or high-skilled employment positions as necessary to facilitate the employers' relocation to or expansion of operations in Texas; and

--award grants to public community colleges or public technical colleges that provide workforce training and related support services to employers that commit to establishing a place of business in Texas.

New §803.4(c) reflects the statutory language in the Texas Labor Code that the SDF grant funds may be used to develop:

--customized workforce training programs for an employer's specific business needs;

--fast-track curriculum;

--workforce training--related support services for employers; and

--instructor certification necessary to provide workforce training.

New §803.4(d) reflects the statutory language in the Texas Labor Code that SDF grant funds may also be used to acquire training equipment necessary for instructor certification and employment. The rule language clarifies that the use of funds for this purpose is permitted only for SDF grants that are funded under §803.4 to support employers expanding in or relocating to Texas.

Texas Labor Code, §303.0031 allows TWC to require grant recipients, as a condition of receiving grant funds under this section, to agree to repay the amount received and any related interest if TWC determines that the grant funds were not used for the purposes for which the funds were awarded. New §803.4(e) includes this option.

SUBCHAPTER B. PROGRAM ADMINISTRATION

TWC adopts the following amendments to Subchapter B:

§803.11. Grant Administration

Section 803.11(3) is amended to correct the citation for Agency Monitoring Activities to Chapter 802, Subchapter D.

§803.13. Program Objectives

Section 803.13(2) is amended to promote collaboration of workforce activities in workforce areas as an SDF program objective. The amended language removes collaboration solely with Boards and expands the promotion of collaboration and awareness of workforce activities to a broader partnership of entities.

§803.14. Procedure for Requesting Funding

Section 803.14 is amended to clarify the language stating that SDF applicants obtain the review and comments of the Board in the applicable workforce areas where there is a significant impact on job creation or incumbent worker training.

TWC notes that collaboration between grant applicants and Boards during the SDF project development review and evaluation process ensures that the needs of local industry and the workforce are being met effectively and efficiently.

In response to comment, adopted §803.14 is amended to add subsections (a) - (c) to clarify language for the requirement that Boards review and comment on SDF applications before the applications are submitted to TWC.

The subsequent subsections are relettered accordingly to accommodate the added subsections.

Section 803.14(h)(6) is amended to include Boards, along with the entities currently in rule, in the signed agreement outlining each entity's roles and responsibilities if a grant is awarded.

Section 803.14(h)(8) is amended to require grant applicants to include a comparison of costs per trainee for customized training projects for similar Board instruction in the grant application in order to align with the current requirement for comparison of costs with instruction at community and technical colleges or TEEX.

§803.15. Procedure for Proposal Evaluation

Section 803.15(b) is amended to remove the requirement that TWC must notify the Board in the applicable workforce area

when it is evaluating an SDF application. The amended section adds the requirement that TWC must notify all eligible grant applicants when it is evaluating an SDF application. The intent of the amended language is that this notification is to promote collaboration and awareness of potential workforce activities in the workforce area.

TWC Chapter 802, Subchapter G, Corrective Actions, allows TWC to impose corrective actions when a Board or TWC grantee--defined in §802.2(1) to include SDF grantees--has failed to comply with contract requirements.

TWC contends that if an entity has failed to comply with past contract requirements and continues to be on corrective action for this noncompliance at the time of the entity's application, the entity should not be eligible for an SDF grant. Therefore, §803.15(d) is added to prohibit SDF applicants on corrective action as described in Chapter 802, Subchapter G, from receiving an SDF grant.

TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENT

The public comment period closed on December 14, 2020. Comments were received from Blinn College and Texas Association of Workforce Boards (TAWB).

§803.14. Procedure for Requesting Funding

Comment: Blinn College stated that "[b]oth the local workforce boards and community colleges play a key role in training the next generation of Texans. Further, the College has no issue with the continued involvement of the local workforce development boards in the review/approval process of SDF grant applications when local boards are not submitting their own SDF grant applications. However, when a local workforce board is submitting their own SDF grant application, their simultaneous involvement in the review/approval process of competing SDF grant applications should not be allowed."

Response: The Commission agrees that simultaneous involvement in the review and approval process of competing SDF grant applications should not be allowed and therefore revises the language in §803.14 as described in the response to the next comment.

Comment: TAWB provided language to ensure compliance with legislative intent and to allow Boards to retain their leadership role and local authority of employer-driven workforce development Boards by continuing to require review of non-Board SDF grant applications. TAWB provided the following language:

(a) A qualified applicant shall present to the executive director or his or her designee, an application including a proposal requesting funding for a customized training project or other appropriate use of the fund, after obtaining the review and comments of the Board in the applicable workforce area(s) in which there would be a significant impact on job creation or incumbent worker training as a result of the proposal, and including those comments with the proposal, except as provided in subsection (b) below.

(b) A qualified applicant is not required to obtain or provide the comments of any Board that is submitting a grant application that targets development of the same skills for employers in the same industry.

Response: The Commission agrees that Boards may continue to review applications submitted by eligible applicants, and to clarify this process, the Commission adds the following language to §803.14:

(a) An eligible applicant shall present to the executive director or his or her designee, an application for funding, in order to acquire grant funds for the provision of customized training as may be identified by the eligible applicant. Except as provided in subsection (b) of this section, the eligible applicant will request the review and comments of the Board in the applicable workforce area(s), where there is a significant impact on job creation or incumbent worker training, and submit these comments to the executive director or his or her designee with the application for funding.

(b) An eligible applicant is not required to obtain or provide the comments if the Board informs the applicant that the Board is preparing an application or has submitted an application that has not been approved or rejected. A Board is not required to comment on its own applications.

(c) An eligible applicant shall submit any updates to the original application for funding in accordance with subsections (a) and (b) of this section.

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SKILLS DEVELOPMENT FUND

40 TAC §§803.1, 803.2, 803.4

STATUTORY AUTHORITY

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.

§803.2. Definitions.

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Customized training project--A project that:

(A) provides workforce training, with the intent of either adding to the workforce or preventing a reduction in the workforce, and is specifically designed to meet the needs and special requirements of:

(i) employers and employees or prospective employees of the private business or business consortium; or

(ii) members of the trade union; and

(B) is designed by a private business or business consortium, or trade union in partnership with:

(i) a public community college;

(ii) a technical college;

(iii) TEEX;

(iv) a Board; or

(v) a community-based organization only in partnership with the public community and technical colleges or TEEX.

(2) Eligible applicant--An entity identified in Texas Labor Code, Chapter 303, as eligible to apply for funds:

(A) a public community college;

(B) a technical college;

(C) TEEX;

(D) a Board; or

(E) a community-based organization only in partnership with the public community and technical colleges or TEEX.

(3) Executive director--The executive director of the Texas Workforce Commission.

(4) Grant recipient--A recipient of a Skills Development Fund grant that is:

(A) a public community college;

(B) a technical college;

(C) TEEX;

(D) a Board; or

(E) a community-based organization only in partnership with the public community and technical colleges or TEEX.

(5) Non-local public community and technical college--A public community or technical college providing training outside of its local taxing district.

(6) Private partner--A sole proprietorship, partnership, corporation, association, consortium, or private organization that enters into a partnership for a customized training project with:

(A) a public community college;

(B) a technical college;

(C) TEEX;

(D) a Board; or

(E) a community-based organization only in partnership with the public community and technical colleges or TEEX.

(7) Public community college--A state-funded, two-year educational institution primarily serving its local taxing district and service area in Texas and offering vocational, technical, and academic courses for certification or associate's degrees.

(8) Public technical college--A state-funded coeducational institution of higher education offering courses of study in vocational and technical education, for certification or associate's degrees.

(9) Texas A&M Engineering Extension Service (TEEX)--A higher education agency and service established by the Board of Regents of the Texas A&M University System.

(10) Trade union--An organization, agency, or employee committee in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(11) Training provider--An entity or individual that provides training, including:

(A) a public community college;

(B) a technical college;

(C) TEEX;

(D) a community-based organization only in partnership with the public community or technical college or TEEX; or

(E) An individual, sole proprietorship, partnership, corporation, association, consortium, governmental subdivision, or public or private organization with whom a Board, public community or technical college, or TEEX has subcontracted to provide training.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 5, 2021.

TRD-202100066
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: January 25, 2021
Proposal publication date: November 13, 2020
For further information, please call: (512) 936-6478

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SUBCHAPTER B. PROGRAM ADMINISTRATION

40 TAC §§803.11, 803.13 - 803.15

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.

§803.14. Procedure for Requesting Funding.

(a) An eligible applicant shall present to the executive director or his or her designee, an application for funding, in order to acquire grant funds for the provision of customized training as may be identified by the eligible applicant. Except as provided in subsection (b) of this section, the eligible applicant will request the review and comments of the Board in the applicable workforce area(s), where there is a significant impact on job creation or incumbent worker training, and submit these comments to the executive director or his or her designee with the application for funding.

(b) An eligible applicant is not required to obtain or provide the comments if the Board informs the applicant that the Board is preparing an application or has submitted an application that has not been approved or rejected. A Board is not required to comment on its own applications.

(c) An eligible applicant shall submit any updates to the original application for funding in accordance with subsections (a) and (b) of this section.

(d) TEEX, or the public community or technical college that is a partner to a training proposal for a grant from the Skills Development Fund, may be non-local.

(e) The training proposal shall not duplicate a training project available in the workforce area in which the private partner or trade union is located.

(f) Proposals shall disclose other grant funds sought or awarded from the Agency or other state and federal entities for the proposed job training project.

(g) Applicants shall indicate whether they are submitting concurrent proposals for the Skills Development Fund and the Texas Enter-

prise Fund. For the purposes of this subsection, "concurrent proposal" shall mean:

(1) a proposal for the Skills Development Fund that has been submitted and is pending at the time an applicant submits a proposal for the Texas Enterprise Fund; or

(2) a proposal for the Texas Enterprise Fund that has been submitted and is pending at the time an applicant submits a proposal for the Skills Development Fund.

(h) Proposals shall be written and contain the following information:

(1) The number of proposed jobs created and/or retained;

(2) A brief outline of the proposed training project, including the skills acquired through training and the employer's involvement in the planning and design;

(3) A brief description of the measurable training objectives and outcomes;

(4) The occupation and wages for participants who complete the customized training project;

(5) A budget summary, disclosing anticipated project costs and resource contributions, including the dollar amount the private partner is willing to commit to the project;

(6) A signed agreement between the private partner or trade union and the Board, public community or technical college, or TEEX outlining each entity's roles and responsibilities if a grant is awarded;

(7) A statement explaining the basis for the determination that there is an actual or projected labor shortage in the occupation in which the proposed training project will be provided that is not being met by an existing institution or program in the workforce area;

(8) A comparison of costs per trainee for the customized training project and costs for similar instruction at the public community or technical college, TEEX, and the Board;

(9) A statement describing the private partner's or trade union's equal opportunity employment policy;

(10) A list of the proposed employment benefits;

(11) An indication of a concurrent proposal as required by subsection (e) of this section; and

(12) Any additional information deemed necessary by the Agency to complete evaluation of a proposal.

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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Les Trobman
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 936-6478

CHAPTER 806. PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

The Texas Workforce Commission (TWC) adopts the following amendments to Chapter 806, relating to Purchases of Products and Services from People with Disabilities:

Subchapter A. General Provisions Regarding Purchases of Products and Services from People with Disabilities, §806.2

Subchapter D. Community Rehabilitation Programs, §806.41

Subchapter E. Products and Services, §806.53

TWC adopts the following new sections to Chapter 806, relating to Purchases of Products and Services from People with Disabilities:

Subchapter B. Advisory Committee Responsibilities, Meeting Guidelines, §806.23

Subchapter D. Community Rehabilitation Programs, §806.42

Subchapter J. Transition and Retention Plans, §§806.100 - 806.104

The amendments to §806.2 and §806.53 and new §§806.23, 806.42, and 806.100 - 806.104 are adopted without changes to the proposed text as published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8499). These rules will not be republished.

The amendments to §806.41 are adopted with changes to the proposed text as published. These rules will be republished.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the amendments to Chapter 806 is to implement Senate Bill (SB) 753, 86th Texas Legislature, Regular Session (2019); and provide program clarification and improvement opportunities.

Senate Bill 753

SB 753 amended the Texas Human Resources Code, Chapter 122, relating to the Purchasing from People with Disabilities (PPD) program, by adding the following sections:

--Section 122.0075, which requires Community Rehabilitation Programs (CRPs) that participate in the PPD program and that pay subminimum wage to develop, with the assistance of TWC, a Transition and Retention Plan (TRP) to increase the wages of their workers with disabilities to the federal minimum wage by September 1, 2022, and to address specifically how they will retain workers after the increase in wages to at least the federal minimum wage

--Section 122.0076, which requires all CRPs that participate in the PPD program to pay each worker with a disability at least the federal minimum wage

Transition and Retention Plan

Texas Human Resources Code, §122.0075 requires TWC to assist CRPs that currently pay subminimum wage in developing their TRPs and to provide:

--information about certified benefits counselors to ensure that workers are informed of work incentives and the potential impact that the increase in wages may have on a worker's eligibility for pertinent federal or state benefit programs; and

--a referral to a certified benefits counselor to any worker with a disability who requests a referral.

Texas Human Resources Code, §122.0075 requires the TRP to ensure, to the fullest extent possible, that each worker with a disability is retained by the CRP after the program increases wages to at least the federal minimum wage. The section also requires CRPs that cannot retain all workers with a disability after the wage increase to work with TWC and other relevant governmental entities to obtain job training and employment services to help the workers find other employment that pays at least the federal minimum wage. The section further allows TWC, at the worker's request, to help the worker who is not retained by the CRP to secure employment that pays at least the federal minimum wage.

Additionally, Texas Human Resources Code, §122.0075(f) allows, but does not require, TWC to extend the period for compliance with the minimum wage requirements in Texas Human Resources Code, §122.0076 for not more than 12 months if the CRP:

--requests the extension by March 1, 2022;

--has demonstrated to TWC that an extension would be in the best interest of the CRP's employees with disabilities;

--has worked with TWC to develop a TRP and made meaningful progress toward meeting the minimum wage requirements; and

--submits a revised plan to TWC detailing how the extension will allow the CRP to meet the minimum wage requirements.

TWC must decide on the request for an extension no later than May 1, 2022. The requirements of Texas Human Resources Code, §122.0075 expire on September 1, 2023.

CRP Minimum Wage Requirements

Texas Human Resources Code, §122.0076(a) requires all CRPs participating in the PPD program to pay each worker with a disability at least the federal minimum wage for any work relating to products or services purchased by the CRP through the PPD program. Texas Human Resources Code, §122.0076(d) states that the minimum wage requirement does not apply to a CRP's eligibility before the later of:

--September 1, 2022; or

--the date of the extension granted by TWC under Texas Human Resources Code, §122.0075(f).

Texas Human Resources Code, §122.0076(b) allows, but does not require, TWC to exempt a CRP worker with a disability from the minimum-wage requirements if TWC determines, based on the worker's circumstances, that requiring the minimum wage would result in the:

-- CRP not being able to retain the worker with a disability;

--worker not being successful in obtaining work with a different employer; and

--worker not being able to obtain employment at a higher wage than the CRP could pay.

Program Clarification and Improvement Opportunities

Workforce Innovation and Opportunity Act Referrals to CRPs

The Chapter 806 rule amendments address issues related to the percent of a CRP's direct labor hours that must be performed by individuals with disabilities, particularly in relation to Workforce Innovation and Opportunity Act (WIOA) of 2014 referrals.

Texas Human Resources Code, §122.013(c)(3) requires TWC to establish, by rule, the minimum percentage of employees with disabilities that an organization must employ to be considered a CRP for the PPD program. Section 806.53 requires CRPs to certify compliance with the requirement that, for each contract, individuals with disabilities perform 75 percent of each CRP's total hours of direct labor that are necessary to deliver services and products.

WIOA and its implementing regulations established that employment outcomes in the Vocational Rehabilitation (VR) program must be in competitive integrated employment (CIE). The components of a CIE setting are defined further in 34 Code of Federal Regulations (CFR) Part 361. Successful employment outcomes that are reported by state VR agencies under WIOA must meet the definition of CIE.

Based on these WIOA provisions, an employer that must meet a requirement that 75 percent of its direct labor hours be performed by individuals with disabilities will have difficulty meeting the integrated location criteria in WIOA. The VR program may not refer customers to PPD CRPs for employment opportunities unless the opportunities meet WIOA requirements.

Similarly, the 75 percent requirement limits a CRP's options to offer CIE opportunities to workers with disabilities who wish to work in an integrated setting.

Chapter 806 will maintain the 75 percent of direct hours requirement. However, these rule amendments allow the Commission to approve a percentage different from 75 percent at the time of the CRP's initial certification and subsequent re-certifications for a CRP that proposes to participate in the PPD program and offer employment opportunities for individuals with disabilities that meet the WIOA definition of CIE or such other reasons.

Other Program Clarification and Improvement Opportunities

The Chapter 806 rule amendments also address:

--CRP's compliance with state law and regulations;

--communication with the PPD Advisory Committee;

--Commission approval of products and services;

--determination of a worker with a disability;

--use of contract labor; and

--clarifying appreciable contribution and value added by individuals with disabilities.

Rule Review

Texas Government Code, §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC has assessed whether the reasons for adopting or readopting the rules continue to exist. TWC finds that the rules in Chapter 806 are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist, therefore, TWC proposes to readopt Chapter 806, Purchases of Products and Services from People with Disabilities, with the amendments described in this rulemaking.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS REGARDING PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

TWC adopts amendments to Subchapter A, as follows:

§806.2. Definitions

Section 806.2 is amended to add the following definitions:

Individual with Disabilities is defined as an individual with a disability recognized under the Americans with Disabilities Act and employed by a CRP or an entity selected by a CRP.

Minimum wage is defined as the wage under Section 6, Fair Labor Standards Act of 1938 (29 USC §206).

SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES, MEETING GUIDELINES

TWC adopts amendments to Subchapter B, as follows:

§806.23. Submitting Reports and Input to the Commission

Current §806.21 addresses the role of the PPD Advisory Committee and requires the committee to provide input and recommendations to the Commission on the PPD program. However, §806.21 does not address how the PPD Advisory Committee's advice, activity, or recommendations that result from its meetings will be communicated to the Commission.

New §806.23 establishes requirements for the PPD Advisory Committee for submitting reports and input to the Commission. The new section requires the PPD Advisory Committee to:

--meet semiannually, with at least one meeting each fiscal year to review and, if necessary, recommend changes to program objectives, performance measures, and criteria established under §806.21(b); and

-- prepare and submit to the Commission a report containing any findings and recommendations within 60 days of the completion of the meeting.

SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS

TWC adopts amendments to Subchapter D, as follows:

§806.41. Certification and Recertification of Community Rehabilitation Programs

Several provisions of §806.41 are amended relating to the certification and recertification of CRPs.

Compliance with State Laws and Regulations

Section 806.41 is amended to add the requirement that CRPs maintain compliance with Unemployment Insurance tax, wage claims, and state licensing, regulatory, and tax requirements.

New §806.41(q) requires CRPs to:

--be clear of any debts related to Unemployment Insurance taxes or wage claims; and

--meet the state licensing, regulatory, and tax requirements applicable to the CRP.

Additionally, §806.41(e) is amended to add a reference to this new requirement and add that failure to maintain compliance shall result in revocation of the CRP's certification to participate in the PPD program. Section 806.41(i) is also amended to add a reference to this requirement for continuation in the program.

Determinations of an Individual with a Disability

Section 806.41(e)(2) requires CRPs to provide documentation of approved disability determinations. However, Chapter 806 does not address the qualifications of individuals who make the determination that a worker has a disability. As a result, standards are inconsistent among CRPs regarding the determination of an individual who qualifies as a worker with a disability. Additionally, some CRPs make their own determination of whether an individual meets the definition of a worker with a disability.

Section 806.41(e)(5) is added to require that a CRP must ensure that disability determinations are or were conducted by a medical professional, vocational rehabilitation professional, local education agency, Social Security Administration, or other individual who:

--has demonstrated the qualifications necessary to make such determinations; and

--is an independent, non-CRP individual.

The intent of this change is to require that a determination that a worker has a disability be made by an independent, non-CRP individual, including a medical professional, vocational rehabilitation professional, local education agency, Social Security Administration, or another individual who has expertise in diagnosing or providing services to individuals with disabilities.

Direct Labor Hours

Section 806.41(f)(9) is amended to include in the CRP's notarized statement that the CRP will comply with the Commission's approved percentage different from 75 percent of the CRP's total direct labor hours. Section 806.41(f)(9) is also amended to remove the waiver provisions of the 75 percent requirement as a waiver is no longer necessary if the CRP requests and is approved for a different percentage.

Section 806.41(f)(10) is added to state that if the CRP intends to seek a required minimum percentage other than the 75 percent of the CRP's total hours of direct labor for a contract, the CRP must submit the request with their application for approval. The request must include a rationale consistent with one or more criteria in §806.53(a)(4) and (b)(3) as applicable.

Section 806.41(i) is amended to include the requirements of §806.41(f)(10) in the recertification process.

Other Changes

Additionally, new §806.41(e)(6) adds the requirement that a CRP must provide all communication, training, and planning materials to employees in an accessible format.

§806.42. Minimum Wage and Exemption Requirements

New §806.42 sets forth the requirements of Texas Human Resources Code, §122.0076(b) (as added by SB 753) related to the minimum wage. Texas Human Resources Code, §122.0076(b) allows, but does not require, TWC to exempt a CRP worker with a disability from the minimum wage requirements if TWC determines, based on the worker's circumstances, that requiring the minimum wage would result in the:

--CRP not being able to retain the worker with a disability;

--worker not being successful in obtaining work with a different employer; and

--worker not being able to obtain employment at a higher wage than the CRP is able to pay.

SB 753 prohibited the minimum wage requirement from applying to a CRP's eligibility to participate in the PPD program before the later of:

--September 1, 2022; or

--the date an extension of the minimum wage as allowed under the new §806.103.

New §806.42 reflects the requirements of SB 753.

New §806.42(a) requires that a CRP participating in the PPD program shall pay each worker with a disability employed by the program at least the minimum wage for any work relating to any products or services purchased from the CRP through the program.

New §806.42(b) allows TWC to exempt a CRP from the requirements of §806.42 with respect to a worker with a disability if TWC determines an exemption is warranted. TWC may consider the following factors in making the determination:

--requiring the CRP to pay the worker at the minimum wage would result in:

--the CRP not being able to retain the worker with a disability;

--the worker would not have success obtaining work with a different employer;

--the worker, based on the worker's circumstances, would not be able to obtain employment at a higher wage than the CRP would be able to pay the worker notwithstanding the requirements of §806.42;

--the CRP's efforts to retain the worker;

--the CRP's efforts to asset the worker in finding other employment, including other employment at a higher wage than the CRP will pay;

--whether the exemption is temporary or indefinite;

--whether employment services provided by other entities that serve individuals who have significant intellectual or developmental disabilities are available and could assist the worker to obtain employment at or above minimum wage.

New 806.43(c) states that the minimum wage requirements do not apply to a CRP's eligibility to participate before the later of:

--September 1, 2022; or

--the date an extension granted under §806.103.

SUBCHAPTER E. PRODUCTS AND SERVICES

TWC adopts amendments to Subchapter E, as follows:

§806.53. Recognition and Approval of Community Rehabilitation Program Products and Services

Approval of Products and Services

Section 806.53(a) is amended to remove the requirement that the Commission approve a CRP's products and services. The amended section assigns the approval of products and services to TWC's executive director or deputy director.

The intent of the rule change is to streamline and shorten the period for review and approval and support timelier deployment of a CRP's products and services. The Commission will continue to provide guidance on products and services but will delegate the actual approval of a CRP's products and services to the executive director or deputy executive director.

Direct Labor Hours

Section 806.53(a) and (b) are amended to allow the Commission to establish a percentage different from 75 percent after considering factors including but, not limited to, a CRP's proposal to participate in the PPD program and offer employment opportunities for individuals with disabilities that meet the WIOA definition of CIE at the time of the CRP's initial certification and subsequent re-certifications.

Clarifying Appreciable Value Added by Individuals with Disabilities

Section 806.2(1) defines appreciable contribution as "...the substantial work effort contributed by individuals with disabilities in the reforming of raw materials, assembly of components or packaging of bulk products in more saleable quantities, by which value is added into the final product offered for sale or through which the individuals with disabilities develop new job skills that have not been previously attained through other jobs."

Section 806.2(11) defines value added as "The labor of individuals with disabilities applied to raw materials, components, goods purchased in bulk form resulting in a change in the composition or marketability of component materials, packaging operations, and/or the servicing tasks associated with a product. Pass-throughs are not allowed; therefore, solely affixing a packaging label to a commodity does not qualify."

Section 806.53(b)(2) states that "Appreciable contribution and value added to the product by individuals with disabilities must be determined to be substantial on a product-by-product basis, based on requested documentation provided to the Agency upon application for a product to be approved for the state use program."

Section 806.53(e) is added to provide criteria for determining if duties performed by individuals with disabilities qualify as value added as required under §806.53(b)(2). New §806.53(e) requires that before the inclusion of a product or service in the program, a CRP must describe the product or service that will be provided though the program in sufficient detail for TWC to determine the item's suitability for inclusion in the program.

Rule language further states that TWC may consider those factors deemed necessary to the determination of the program suitability of a product or service, including, but not limited to, state and federal statutes governing state agencies, geographic saturation of CRPs providing like products and services, and whether the products and services will generate sufficient demand to provide employment for individuals with disabilities.

SUBCHAPTER J. Transition and Retention Plans

TWC adopts new Subchapter J, as follows:

New Subchapter J sets forth rules for TRPs required by SB 753.

§806.100. Scope and Purpose

New §806.100 provides the scope and purpose of Subchapter J.

New §806.100(a) states that the purpose of the subchapter is to set forth the rules relating to a CRP's TRP, as required by Texas Human Resources Code, §122.0075, to meet the minimum wage requirements of Texas Human Resources Code, §122.0076.

New §806.100(b) states that the subchapter applies to a CRP that is participating in the state use program and pays workers with disabilities employed by the CRP wages that are less than

the federal minimum wage under Section 6, Fair Labor Standards Act of 1938.

New §806.100(c) includes the expiration date of September 1, 2023, for the subchapter, which mirrors the expiration date of Texas Human Resources Code, §122.0075.

§806.101. Requirements for Transition and Retention Plans

SB 753 requires TWC to assist CRPs in developing the TRP by providing workers with information about and referrals to VR counselors to ensure that workers are informed of work incentives as well as the potential impact that the increase in wages may have on eligibility for federal and state benefit programs.

However, SB 753 did not specify requirements for the TRP regarding the milestones, documentation, resources, or reports needed to demonstrate that the CRP is making progress toward meeting the minimum wage and staff retention requirements--a necessary component of granting extensions, as discussed in new §806.102.

New §806.101 includes due dates and other requirements of the TRP.

New §806.101(a) requires that a CRP subject to Subchapter J shall submit a TRP no later than sixty days from the effective date of these rule.

New §806.101(b) requires that the TRP include the full transition goal, including full retention of workers, placement of workers in job training, and fully assisting workers in need of placement goal to meet the wage requirements no later than January 1, 2022.

It is the intent of the Commission that CRPs have full retention of workers with disabilities at the minimum wage or above the placement of workers in job training, or full assistance to workers in need of placement. CRPs not meeting this goal should consider requesting an extension.

New §806.101(c) requires that the TRP contain the following elements:

--Worker Assessment (Employee Receiving Subminimum Wages), including:

--Wage difference / Minimum Wage pay gap

--Line of business employed

--Current skills

--Person-Centered Planning and Career Counseling

--Disability Benefits Impact Analysis based on wage increase

--Opportunities to transfer skills to other state use contract with CRP

--Participation in the assessment by the employee's VR counselor, if the employee is a participant in the VR program at the time of the assessment.

-- Goals, including:

--Raise wages for worker paid subminimum wage to Federal minimum wage or more by September 1, 2022

--Retain workers of the CRP as the CRP moves through the transition plan

-- Milestones: Achieved by reporting progress in reaching specific actions in the TRP through benchmarks and strategies:

--Benchmarks to include the following:

--Number and percentage of workers provided wage increases by a designated point in time

--Number and percentage of workers provided assessment and counseling by a certain date

--Number and percentage of workers entering and completing training

--Strategies necessary to achieve goals including:

--CRP evaluation of existing line of business for price and added value adjustment consider increasing price to pay for increase in wages

--Requesting assistance from WorkQuest in developing new lines of business to provide employment opportunities to workers receiving sub minimum wage

--CRP pursuing partnerships to expand lines of business and increase wages of workers paid subminimum wages.

--Reports: Monthly or quarterly

--Retention status

--Progress on benchmarks and strategies

--Wages

--Hours Worked

In accordance with Texas Human Resources Code, §122.0075(b)(2), new §806.101(d) requires TWC to assist the CRP in developing the TRP by providing information about certified benefits counselors and by providing a referral to a certified benefits counselor for any CRP employee who requests a referral.

New §806.101(e) requires TWC to review the progress of each TRP at intervals established by TWC and provide technical assistance as necessary and upon request from the CRP.

§806.102. Extensions for Transition and Retention Plans

SB 753 allows, but does not require, TWC to extend the deadline for compliance with the minimum wage requirements for no more than 12 months if the CRP requests the extension by March 1, 2022, and TWC approves by May 1, 2022.

For TWC to grant an extension, SB 753 requires that the CRP:

--has demonstrated to TWC that an extension would be in the best interest of the CRP's employees with disabilities;

--has worked with TWC to develop a TRP and made meaningful demonstrable progress toward meeting the minimum wage requirements; and

--has submitted a revised plan to TWC detailing how the extension will allow the CRP to meet the minimum wage requirements.

Extensions may not be for more than 12 months; therefore, the Commission has the option to grant extensions of fewer than 12 months or grant extension dates specifically requested by a CRP. To ensure consistent implementation of TRPs, the Commission may grant a standard 12-month extension from May 1, 2022, to April 30, 2023, to CRPs requesting and meeting the requirements for an extension.

New §806.102(a) contains the statutory requirement that no later than March 1, 2022, a CRP may request an extension of the TRP.

New §806.102(b) requires TWC to approve or deny all extension requests no later than April 1, 2022. The April 1 date is chosen to

allow a CRP to request a reconsideration of a denial, and to have the denial decision resolved, by the statutorily required date of May 1, 2022.

New §806.102(c) states the requirements for granting an extension as required in SB 753, namely that the CRP shall:

--demonstrate that an extension would be in the best interest of the CRP's employees with disabilities;

--have requested assistance and worked with the TWC before requesting an extension;

--have made meaningful progress toward meeting the minimum wage requirement;

--have submitted a revised TRP to the TWC detailing how the extension will allow the CRP to meet the minimum wage requirements.

Finally, SB 753 does not address whether a CRP may appeal if TWC does not grant an extension. TWC's Chapter 823 Integrated Complaints, Hearings, and Appeals rules do not apply to the PPD program.

New §806.102(d) establishes a separate informal reconsideration process to grant a CRP additional time to demonstrate that an extension is warranted. The new rule language allows a CRP to request that TWC reconsider extension denials provided the request is made no later than April 10, 2022.

New §806.102(e) requires the TWC executive director to review and make a determination on reconsideration requests.

New §806.102(f) requires TWC to make a final decision on all reconsideration requests no later than May 1, 2022.

§806.103. Withdrawal from the Program

New §806.103 provides the requirements for a CRP to notify TWC of its intent to withdraw from the PPD program if a CRP does not intend to meet the minimum wage requirements and determines that it will not seek any exemptions under Texas Human Resources Code, §122.0076, if eligible.

New §806.103(a) states that a CRP shall notify TWC no later than March 1, 2022, if the CRP intends to voluntarily withdraw from the program.

New §806.103(b) states that any CRP that has not withdrawn voluntarily from the program, does not have an extension or approved exemptions in place and is not meeting the minimum wage requirements on September 1, 2022, or by the granted extension date, will be involuntarily removed by revocation of the CRP's certification to participate in the program

The effective date of the withdrawals will be September 1, 2022, which is the statutory deadline for CRPs to meet the minimum wage requirement. This time frame allows for a transition period for transferring contracts under the PPD.

§806.104. New CRPs during the TRP Period

Texas Human Resources Code, §122.0076(d) states that the requirement in Texas Human Resources Code, §122.0076(a) that all CRPs pay at least the minimum wage does not apply to a CRP's eligibility to participate in the PPD program before September 1, 2022, or to the extension date granted by TWC, whichever date is later. However, any entity applying for CRP certification before September 1, 2022, during the TRP period must either pay at or above the minimum wage or have a plan to pay at or above the minimum wage by September 1, 2022, unless the workers employed by the CRP are eligible for an exemption, as described §806.102.

CRPs paying subminimum wage and entering the PPD program after the proposed implementation start date in July 2020 will have less time to transition and retain workers effectively to meet the September 1, 2022, statutory deadline.

New §806.104 requires all CRPs not meeting minimum wage requesting certification after the date to request an extension pursuant to §806.102(a)--March 1, 2022--shall be required to meet the minimum wage requirements no later than September 1, 2022.

TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The public comment period closed on December 28, 2020. Comments were received from Goodwill Industries of Fort Worth, Work Services Corporation, and one individual.

§806.41. Certification and Recertification of Community Rehabilitation Programs

Comment: A commenter stated that proposed §806.41(e)(5) will impose an undue burden on CRPs. Proposed §806.41(e)(5) will increase lag time for filling temporary assignments for state agencies as additional time will be required to obtain a signature from a non-CRP entity. Individuals at the commenter's organization are highly experienced in working with individuals with disabilities, are highly trained to document a disability, and have been credentialed by UNTWISE.

Response: The Commission understands the concern with the potential impact of the change on CRP operations. However, the intent of the change is to avoid a real or perceived conflict of interest on the part of the CRPs. An effective way to avoid this is to have a qualified, independent third party certify an individual's disability. Many individuals applying for employment with a CRP will have been previously determined to have a disability by a qualified individual and may submit the documentation from the prior disability determination to the CRP for review.

Comment: A commenter stated that proposed §806.41(e)(5)(A) fails to define necessary qualifications.

Response: The proposed preamble included a sample listing of qualified individuals including medical professionals and VR Counselors. At adoption, this list is expanded to clarify the inclusion of disability determination documentation from the Social Security Administration and schools complying with the Individuals with Disabilities Education Act. In response to this comment, the Commission revises §806.41(e)(2) and (5) to clarify and incorporate the listing into the rule language.

Comment: A commenter stated that the intent of proposed §806.41(e)(5)(A) is to achieve proper and appropriate disability determinations; however, the rule oversimplifies the disability determination process.

Response: The Commission disagrees with the comment. The intent of the proposed change with respect to disability determination addresses only that determination. Determining an individual's disability should not be nuanced by the context of the environment in which that individual is or will be expected to function. The decision whether an individual can or cannot function in a specific work environment should be made independent of the disability determination and not be part of the disability de-

termination process. No changes were made in response to this comment.

Comment: A commenter stated that proposed §806.41(e)(5)(B) will result in CRPs restructuring their process in a way that may not achieve the independence intended by the rule and will result in hiring delays and/or increased expenses for CRPs who place individuals with disabilities into jobs.

Response: The Commission understands the concern with the potential impact of the change on CRP operations. However, the intent of the change is to avoid a real or perceived conflict of interest on the part of the CRPs. An effective way to avoid this is to have a qualified, independent third party certify an individual's disability. Many individuals applying for employment with a CRP will have been previously determined to have a disability by a qualified individual and may submit the documentation from the prior disability determination for review. No changes were made in response to this comment.

Comment: A commenter stated that §806.41(e)(5)(B) could be interpreted to obligate VR Counselors to make disability determinations on behalf of CRPs, increasing the VR Counselor workload while creating a conflict of interest related to his or her case management.

Response: The Commission disagrees with this comment. The intent of the change is not to obligate TWC's VR Program to make disability determinations on the part of CRPs. However, VR Counselors may be a resource for providing certifications if the individual is receiving VR services. No changes were made in response to this comment.

Comment: A commenter stated that §806.41(e)(5)(B) reduces control, oversight, and accountability of disability determinations.

Response: The Commission disagrees with this comment. The adopted rules provide a means for improved consistency in disability determinations and therefore, improved accountability. No changes were made in response to this comment.

Comment: A commenter recommended the Commission not adopt §806.41(e)(5), and if widespread noncompliance exists concerning disability determinations, the Commission should create a disability determination credentialing program.

Response: The Commission does not foresee any changes to its review procedures of the program and will review the program to ensure compliance with the adopted rule requirements. No changes were made in response to this comment.

Comment: A commenter stated that paying an outside individual to determine qualification will add to CRP costs.

Response: The Commission understands the concern with the potential impact of the change on CRP operations. However, the intent of the change is to avoid a real or perceived conflict of interest on the part of the CRPs. An effective way to avoid this is to have a qualified, independent third party certify an individual's disability. Many individuals applying for employment with a CRP will have been previously determined to have a disability by a qualified individual and may submit the disability determination to the CRP for review. No changes were made in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS REGARDING PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

40 TAC §806.2

STATUTORY AUTHORITY

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 implement the requirements of newly enacted Texas Human Resources Code, §122.075 and §122.076 and enable increased opportunities for competitive integrated employment as defined by 34 CFR §361.5(c)(9).

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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Les Trobman
General Counsel
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SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES, MEETING GUIDELINES

40 TAC §806.23

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 implement the requirements of newly enacted Texas Human Resources Code, §122.075 and §122.076 and enable increased opportunities for competitive integrated employment as defined by 34 CFR §361.5(c)(9).

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 D. COMMUNITY REHABILITATION PROGRAMS

40 TAC §806.41, §806.42

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 implement the requirements of newly enacted Texas Human Resources Code, §122.075 and §122.076 and enable increased opportunities for competitive integrated employment as defined by 34 CFR §361.5(c)(9).

§806.41. Certification and Recertification of Community Rehabilitation Programs.

(a) No applicant for certification may participate in the state use program prior to the approval of certification.

(b) The Commission may recognize programs that are accredited by nationally accepted vocational rehabilitation accrediting organizations and approve CRPs that have been approved by a state's habilitation or rehabilitation agency.

(c) The Commission may delegate the administration of the certification process for CRPs to a CNA.

(d) An applicant for CRP certification must be a government or nonprofit private program operated under criteria established by the Commission and under which individuals with severe disabilities produce products or perform services for compensation.

(e) A certified CRP must:

(1) maintain payroll, human resource functions, accounting, and all relevant documentation showing that the employees who produce products or perform services under the state use program are individuals with disabilities;

(2) ensure that documentation includes a disability determination that identifies the individual and documents the presence of a disability, in addition to determining program eligibility, and that shall be subject to review at the request of the Agency or the CNA under authority from the Commission, with adherence to privacy and confidentiality standards applicable to such CRP and employee records;

(3) maintain and dispose of records or documents required by the Agency, including contracts with other entities, in accordance with generally accepted accounting principles, and all laws relevant to the records;

(4) maintain compliance with requirements in subsection (q) of this section, related to Unemployment Insurance tax, wage claims, state licensing, regulatory, and tax requirements. Failure to maintain compliance shall result in revocation of the CRP's certification to participate in the PPD program;

(5) ensure that disability determinations conducted under paragraph (2) of this subsection are or were conducted by a medical professional, vocational rehabilitation professional, local education agency, Social Security Administration, or other individual who:

(A) has demonstrated the qualifications necessary to make such determinations; and

(B) is an independent, non-CRP individual; and

(6) provide all communication, training, and planning materials to employees in an accessible format.

(f) An applicant for certification must submit a completed application and the required documents to the Agency through the CNA for the state use program. Upon receipt, the CNA will verify the completeness and accuracy of the application. No application will be considered without the following documents:

(1) Copy of the IRS nonprofit determination under §501(c), when required by law;

(2) Copy of the Articles of Incorporation issued by the Secretary of State, when required by law;

(3) List of the board of directors and officers with names, addresses, and telephone numbers;

(4) Copy of the organizational chart with job titles and names;

(5) Proof of current insurance coverage in the form of a certificate of insurance specifying each and all coverages for the CRP's liability insurance, auto insurance for vehicles owned or leased by the CRP for state use contract purposes, and workers' compensation insurance coverage or legally recognized equivalent coverage, if applicable. Such insurance shall be carried with an insurance company authorized to do business in the State of Texas, and written notice of cancellation or any material change in insurance coverage will be provided to the CNA 10 business days in advance of cancellation or change;

(6) Fire inspection certificate issued within one year of the formal consideration of the CRP application, if required by city, county, or state regulations, for each location where customers will be served or where individuals with disabilities will be employed, or a statement of unavailability from the appropriate city, county, or state entity;

(7) Copy of the building inspection certificate or certificate of occupancy, if required by city, county, or state regulations, for each location where customers will be served or where individuals with disabilities will be employed, or a statement of unavailability from the appropriate city, county, or state entity;

(8) Copy of the wage exemption certificate (WH-228) if below minimum wages will be paid to customers or to individuals with disabilities who will be employed, and a statement of explanation of circumstances requiring subminimum wages;

(9) Notarized statement that the CRP agrees to maintain compliance with either the 75 percent minimum percentage or other approved minimum percentage approved by the Commission. The required percentage being that percentage of the CRP's total hours of direct labor, for each contract, necessary to perform services or reform raw materials, assemble components, manufacture, prepare, process and/or package products that will be performed by individuals with documented disabilities consistent with the definition set forth in this chapter.

(10) If a CRP intends to seek a required minimum percentage other than the 75 percent of the CRP's total hours of direct labor for a contract, the CRP must submit the request, which shall include a rationale consistent with one or more criteria in §806.53(a)(4) and (b)(3) of this chapter as applicable, with their application for approval; and

(11) An applicant for certification must attest that it either has already developed or will develop, within 90 days of certification, a person-centered plan for each individual with a disability it employs that clearly documents attainable employment goals and describes how the CRP will:

(A) help the individual reach his or her employment goals; and

(B) match the individual's skills and desires with the task(s) being performed for the CRP.

(g) The Agency shall review each complete application and all required documentation and, if acceptable, forward its recommendations to the Commission for approval. Once approved, the Agency

will notify the CRP in writing and assign the CRP a certification number.

(h) A CRP may protest a recommendation of non-approval pursuant to the Agency's appeal process in §806.61 of this chapter.

(i) To continue in the program, each CRP must be recertified by the Commission every three years. The recertification process requires submission of all previously requested documentation, a review of reports submitted to the CNA, and a determination that the CRP has maintained compliance with the stated requirements of the state use program, including requirements described in subsection (q) of this section relating to compliance with unemployment taxes, wage claims, and state licensing, regulatory, and tax requirements. If a CRP intends to seek a required minimum percentage other than the 75 percent of the CRP's total hours of direct labor, the CRP must submit the request, which shall include a rationale consistent with one or more criteria in §806.53(a)(4) and (b)(3) of this chapter as applicable, with their recertification. The Commission shall establish a schedule for the recertification process and the CNA shall assist each CRP as necessary to attain recertification. The CRP, after notification, shall submit within 30 days the application for recertification and required documents to the CNA. If the CRP fails to do so, the Agency may request a written explanation and/or the appearance of a representative of the CRP before the Agency. If the CRP fails to respond in a timely manner, the Agency may consider the suspension of all state use program contracts until the recertification process has been completed and approval has been attained.

(j) The CRP shall submit quarterly wage and hour reports to the CNA. These reports are due no later than the last day of the month following the end of the quarter. If the CRP fails to submit reports on time, the Agency may request a representative of the CRP to appear before the Agency. The Agency may consider the suspension of the CRP's state use program contracts if compliance is not achieved in a consistent and timely manner.

(k) CRPs shall maintain compliance with the state use program regarding percentage requirements related to administrative costs, supply costs, wages, and hours of direct labor necessary to perform services and/or produce products. Compliance will be monitored by the CNA and/or the Agency, and violations will be reported promptly to the Agency. A violation will result in a warning letter from the CNA or Agency, which will then offer assistance as needed to achieve compliance. A CRP that fails to meet compliance requirements, without a waiver from the Agency, for two quarters in any four-quarter period, shall submit a written explanation and a representative of the CRP will be requested to appear before the Agency. State use program contracts may be suspended and/or certification revoked if compliance is not immediately and consistently maintained. To attain reinstatement, the CRP must apply for recertification following the procedures outlined in this chapter.

(l) The Agency may review or designate a CNA or third party to review any CRP participating in the state-use program to verify compliance with the requirements outlined in this chapter.

(m) A CRP must not serve, in whole or part, as an outlet or front for any entity whose purpose is not the employment of individuals with disabilities.

(n) A CRP shall report to the Agency any state agency that is not using the program to benefit individuals with disabilities.

(o) A CRP shall promptly report any conflict of interest or receipt of benefit or promise of benefit to the Agency. The Agency will consider such reports on an individual basis. Verified instances of conflict of interest by a CRP may result in suspension of the CRP's eligibility to participate in the state use program and/or revocation of certification.

(p) The Commission, the Agency, individual members, the State of Texas, or any other Texas state agency will not be responsible for any loss or losses, financial or otherwise, incurred by a CRP should its product or services not be approved for the state use program as provided by law.

(q) A CRP shall:

(1) be clear of any debts related to Unemployment Insurance taxes or wage claims; and

(2) meet the state licensing, regulatory, and tax requirements applicable to the CRP.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. PRODUCTS AND SERVICES

40 TAC §806.53

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 implement the requirements of newly enacted Texas Human Resources Code, §122.075 and §122.076 and enable increased opportunities for competitive integrated employment as defined by 34 CFR §361.5(c)(9).

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 J. TRANSITION AND RETENTION PLANS

40 TAC §§806.100 - 806.104

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 implement the requirements of newly enacted Texas Human Resources Code, §122.075 and §122.076 and enable increased opportunities for competitive integrated employment as defined by 34 CFR §361.5(c)(9).

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CHAPTER 809. CHILD CARE SERVICES

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 809, relating to Child Care Services, without changes, as published in the October 23, 2020, issue of the *Texas Register* (45 TexReg 7551):

Subchapter A. General Provisions, §809.2

Subchapter B. General Management, §§809.12, 809.13, and 809.18

Subchapter E. Requirements to Provide Child Care, §809.91 and §809.93

Subchapter G. Texas Rising Star Program, §§809.130 - 809.134

TWC adopts amendments to the following sections of Chapter 809, relating to Child Care Services, with changes, as published in the October 23, 2020, issue of the *Texas Register* (45 TexReg 7551):

Subchapter B. General Management, §809.16 and §809.19

TWC adopts the following new sections to Chapter 809, relating to Child Care Services, without changes, as published in the October 23, 2020, issue of the *Texas Register* (45 TexReg 7551):

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

The purpose of the 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 adopts 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 adopts 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:

--Children requiring protective services child care

--Children of a qualified veteran or qualified spouse

--Children of a foster youth

--Children experiencing homelessness

--Children of parents on military deployment whose parents are unable to enroll in military-funded child care assistance programs

--Children of teen parents

--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 is considering 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 is considering 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 adopts 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 adopts rule changes authorizing Boards to assess the parent share of cost at the full-time rate and allow reductions for families with part-time referrals with the goal of reducing the financial burden on families that need part-time child care. 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 adopts 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 adopted rulemaking 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 adopts 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 adopts 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.

TWC will:

--outline implementation and rollout plans in more detail in the CCDF State Plan;

--solicit additional input from stakeholders on Pre-Star implementation details during the development of the State Plan;

--host stakeholder webinars during State Plan development; and

--post the draft CCDF State Plan for formal public comment.

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 adopts that assessors be required to take the Texas Rising Star standards training and to obtain the Texas Rising Star Assessment Certification. Additionally, TWC adopts that assessors be required to pass quarterly reliability checks.

TWC also adopts 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 adopts 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 adopts 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 will change the Texas Rising Star guidelines to adjust 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. The teacher-child interactions category will 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 adopts 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 adopts 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 (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. Additionally, TWC will:

--outline the Pre-Star implementation and rollout plans in more detail in the CCDF State Plan;

--solicit additional input from stakeholders on Pre-Star implementation details during the development of the State Plan;

--host stakeholder webinars during State Plan development; and

--post the draft CCDF State Plan for formal public comment.

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 adopted 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 adopts 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 adopts 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 in accordance with quality improvement activity described in applicable state laws and the CCDF State Plan. The amendment to §809.16(a) is intended to note that Boards take into ac-

count all federal and state requirements regarding quality improvement activities. In addition, any quality improvement activities that are undertaken at the state or local level must be acknowledged in the state's 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. In response to comment, §809.19(k)(2) is amended to clarify that parent share of cost reductions are for parents who qualify for the reduction based on the Board's policy.

§809.22. Direct Referrals to Recognized Partnerships (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 adopts 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 removed 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 (see meeting materials for October 6, 2020 Commission meeting). TWC will:

--outline the Pre-Star implementation and rollout plans in more detail in the CCDF State Plan;

--solicit additional input from stakeholders on Pre-Star implementation details during the development of the State Plan;

--host stakeholder webinars during State Plan development; and

--post the draft CCDF State Plan for formal public comment.

§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 adopts 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 §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. PUBLIC COMMENTS

The public comment period ended on December 11, 2020. Comments were received from:

--A Habitat for Learning

--Alamo Workforce Development Board

--Children at Risk, on behalf of:

--Austin/Travis County Success By 6 Coalition

--Big Thought

--Child Care Partners

--Children at Risk

--Creative Corners

--Dallas College School of Education

--Early Matters Dallas

--Emergent ED. Child Care Consulting Inc.

--Gingerbread Kids Academy

--King Steps Academy

--Loving Touch Child Care

--Our Little Red Schoolhouse

--Paso del Norte Children's Development Center

--Pye's Day Care Center

--San Antonio Chapter of TXAEYC

--San Jacinto Christian Academy

--Shirley White, Director, Healy Murphy Child Development Center

--Silver Star Academy

--Texans Care for Children

--United Way of Metropolitan Dallas

--YWCA El Paso del Norte Region

--Country Home Learning Center

--Dallas Early Education Alliance

--Golden Crescent Workforce Development Board

--North Central Workforce Development Board

--Play and Learn Christian Academy

--Tiny Town Day Care Center

--West Central Workforce Development Board

--One Individual

SUBCHAPTER B. GENERAL MANAGEMENT

§809.13. Board Policies for Child Care Services

Comment: Three Boards supported the rule related to the two-week waiting period policy for a child to transfer to a new provider. One Board agreed that this practice aligns with child care industry practices. Another Board stated that it has implemented this procedure and received positive feedback.

Response: TWC appreciates the comments.

§809.16. Quality Improvement Activities

Comment: One Board opposed the language change in §809.16(a) and requested to continue to have the flexibility to offer the full range of quality improvement activities as was intended by federal regulation. This flexibility will allow the Board to offer a wider range of activities that more fully meets the unique needs of local providers in the area.

Response: The proposed language regarding the Board's expenditure of quality improvement funds was not intended to limit a Board's flexibility in determining how to design and deliver quality improvement activities. The amendment to §809.16(a) is intended to note that Boards are to take into account all federal and state requirements regarding quality improvement activities.

Under Texas Government Code, §2308.317(c), Boards shall use at least two percent of their allocation on quality improvement activities and directs Boards to give priority to quality child care initiatives that benefit child care providers that are working toward Texas Rising Star certification or are Texas Rising Star-certified providers working toward higher certification levels. The statute further directs Boards, to the extent practicable, to ensure that professional development funds for child care providers, directors, and employees be used toward the requirement for a credential, certification, or degree program, and that the training meets the requirements of the Texas Rising Star program. In addition, any quality improvement activities that are undertaken at the state or local level must be acknowledged in the state's CCDF State Plan.

The language in §809.16(a) is changed to clarify this intent.

§809.18. Maintenance of a Waiting List

Comment: Two Boards supported the rule regarding direct referrals for children referred from a recognized Prekindergarten, Head Start, and Early Head Start partnership. One Board stated that this change will allow the Board to fill slots within the one-month timeframe for contracted slots.

Response: TWC appreciates the comments.

Comment: One Board stated that the Board was unsure if it will be able to consistently fill vacant slots within the one-month timeframe for other target populations due to their status on the waitlist.

Response: TWC acknowledges that contracted slots must be managed in concert with a Board's existing waiting list. Under current state statutes, Boards are required to prioritize specific populations, and TWC does not have the flexibility to allow an exception for contracted slots. Therefore, the current procedures for managing enrollments using the Board's waiting list remain applicable for contracted slot vacancies, with the noted exception for Prekindergarten and Head Start/Early Head Start.

No changes were made in response to this comment.

§809.19. Assessing the Parent Share of Cost

Comment: Two Boards supported the rule allowing flexibility related to parent share of cost discounts for part-time referrals. One Board stated that the discounts will make child care more affordable for low-income families and demonstrates flexibility and consideration for families with unique child care needs.

Response: TWC appreciates the comments.

Comment: One Board appreciated the flexibility to establish a policy to reduce the parent share of cost for children referred for part-time care. The Board requested clarification regarding when the parent share of cost would change if the parent is re-

ferred to full-time care, specifically if the change would be effective at the beginning of the first full month after the referral change or at the end of the 12-month eligibility period. The Board also requested clarification regarding whether the Board is now being required to offer a reduction in parent share of cost for selecting a Texas Rising Star-certified provider, as referenced in §809.19(k)(2).

Response: Section 809.19(k) allows a Board to establish a policy to reduce the parent share of cost amount assessed on the child's referral for part-time care. The timing of the parent share of cost amount change will be determined by the Board's policy. Boards may consider a policy to implement a parent copay change effective at the beginning of the first full month after the referral is effective.

If the Board establishes a policy described in §809.19(k), the policy must ensure that parents who qualify for a reduction based on both part-time care and selecting a Texas Rising Star provider receive the greater of the two discounts.

Section 809.19(k)(2) is modified to clarify that discounts are for parents who qualify for the reduction based on the Board's policy.

§809.22. Direct Referrals to Recognized Partnerships

Comment: One Board supported the concept of making direct referrals from recognized partnerships. However, the Board stated that more guidance is needed for successful implementation.

Response: TWC appreciates the comment and will work with Boards to provide guidance and technical assistance as needed.

No changes were made in response to this comment.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

§809.43. Priority for Child Care Services

Comment: One individual requested that children of child care workers be included in the first priority group of children in which are mandatory to be served.

Response: TWC appreciates the comment; however, this requested change is outside the scope of the proposed rulemaking.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

§809.91. Minimum Requirements for Providers

Comment: One Board agrees with the rule requiring all subsidy providers to deliver quality care. However, the Board requested clarification on the following questions:

--Will Pre-Star program be required to move forward and apply for Texas Rising Star certification?

--How will equal access be ensured, especially in rural areas with a limited number of child care programs and the likelihood that the limited number of programs in the area may not meet the Pre-Star level?

Response: Regarding the requirement to apply for Texas Rising Star certification, under Texas Government Code, §2308.3155, participation in the Texas Rising Star program is voluntary. Therefore, TWC does not have statutory authority to require subsidy providers to participate in Texas Rising Star.

Regarding equal access, TWC plans to have a five-year implementation period, with the details of this to be outlined in the CCDF State Plan. TWC understands that rural areas may face challenges with the available supply of child care, and want to ensure that is taking into consideration. TWC anticipates that in areas with limited supply, waivers of the Pre-Star requirement may be needed.

TWC will be collecting and analyzing data within the first year or two to better understand the impact of the Pre-Star designation requirement. TWC also wants to consider how providers with licensing deficiencies are afforded an opportunity to address those deficiencies while also considering providers that continue to have critical deficiencies cited by Child Care Regulation.

No changes were made in response to this comment.

Comment: Two Boards requested clarification as to the consequences for providers that meet Pre-Star provider designation initially but receive a licensing citation that would result in the provider no longer meeting the Pre-Star designation and potentially not eligible to provide subsidized child care services.

Response: TWC wants to carefully consider how negative licensing findings on Pre-Star providers should be considered. TWC wants to ensure it considers the consequences for providers that have quickly addressed and corrected issues, versus consequences for providers that do not, and those that have repeated and continual Pre-Star licensing deficiencies.

The rules implement this Pre-Star requirement and that the implementation be detailed in the CCDF State Plan. The CCDF State Plan is currently under development and is due to the Administration for Children and Families by June 30, 2021. TWC will engage with stakeholders in the CCDF State Plan Development, and the draft State Plan will be available for public comment.

No changes were made in response to these comments.

Comment: Several providers and advocacy groups expressed concerns that the Pre-Star requirement does not meet a goal of all subsidy providers participating in Texas Rising Star. Their goal is to ensure that child care providers that participate in the child care subsidy program are able to offer high-quality services to families. To reach that goal, the group supports an approach that requires all subsidy providers to participate in Texas Rising Star, provides them with the necessary supports to improve and reach certification, and phases in requirements to participate and to reach higher levels of quality.

Response: TWC appreciates the comment. However, TWC points out that under Texas Government Code, §2308.3155, participation in the Texas Rising Star program is voluntary. Therefore, TWC does not have statutory authority to require subsidy providers to participate in Texas Rising Star.

No changes were made in response to these comments.

Comment: Several providers and advocacy groups expressed concerns regarding the very long ramp-up period that does not set up providers for Texas Rising Star participation. They advocate for a relatively short timeline for providers to participate in Pre-Star and then a few years for providers to obtain a minimum certification level to continue to participate in the state's subsidy program. The current five-year implementation proposal for Pre-Star is not consistent with that approach.

Response: It is TWC's intent to have the majority, if not all, of subsidy providers designated as Pre-Star prior to the five-year deadline. However, the timeline of five years will allow TWC to ensure that equal and equitable access to child care is

available across the state, specifically in those areas with child care deserts. In addition, TWC wants to ensure that it takes time to carefully consider how to structure consequences for providers that receive licensing deficiencies denoted in Pre-Star. Following the adoption of the rule, TWC will use a portion of this five-year period to work out the details regarding consequences for providers that have quickly addressed and corrected issues, versus consequences for providers that do not, and for those that have repeated and continued Pre-Star licensing deficiencies. These details will be in the CCDF State Plan, which will be available for public comment.

In addition, under Texas Government Code, §2308.3155, participation in Texas Rising Star is voluntary; therefore, programs may choose to participate in certification at their discretion.

No changes were made in response to these comments.

Comment: One Board supported the creation of a Pre-Star provider designation. The Board encouraged TWC to consider offering incentives to Pre-Star providers to achieve Texas Rising Star designation quickly, including offering a declining incentive to encourage earlier adoption by providers.

Response: Boards may utilize CCDF Quality funds to incentivize programs to obtain Texas Rising Star certification.

No changes were made in response to this comment.

Comment: One advocate organization supported the inclusion of a subsidy provider mandatory entry level. The organization is hopeful that, in the future, the Pre-Star designation will become an official part of the Texas Rising Star system and that providers will be mandated to move up through a single system.

The organization stated that Pre-Star providers should receive supports such as information and access to online resources that do not detract from resources available to Texas Rising Star providers. The organization expressed agreement with the decision not to provide enhanced reimbursement rates for Pre-Star programs. The organization also stated that Pre-Star providers should progress to higher levels of quality on a more aggressive timeline. Considering the minimal requirements of Pre-Star and even two-star Texas Rising Star levels, all providers should be mandated to enter into the Pre-Star or Texas Rising Star system within 18 months of the rule change. The organization also recommended that adequate supports should be provided once providers enter into the Texas Rising Star system, and that they should be required to continue to progress to higher levels in order to continue receiving subsidy funding.

Response: Boards will provide information about Texas Rising Star to all early learning programs designated as Pre-Star and the supports and resources that are available to them. Pre-Star designated programs that are working toward Texas Rising Star certification are provided a mentor. Boards may choose to allow Pre-Star designated programs that are not currently working toward Texas Rising Star certification to participate in local initiatives, receive other mentoring services, or participate in the continuous quality improvement process. Timelines for progressively higher-quality ratings are determined by the early learning program. In addition, under Texas Government Code, §2308.3155, participation in Texas Rising Star is voluntary; therefore, TWC cannot mandate entry into Texas Rising Star.

No changes were made in response to this comment.

§809.93. Provider Reimbursement

Comment: One individual requested that TWC's reimbursement model be more similar to how non-subsidized families pay for child care, primarily by paying providers prior to services being provided.

Response: TWC appreciates the comment; however, this requested change is outside the scope of the proposed rulemaking.

§809.96. Contracted Slots Agreements

Comment: One Board supports the rule; however, requested that the payments to providers with contracts be part of an automated system as making payments outside of the current automated system is not a sound accounting function and could cause disallowed costs.

Response: TWC appreciates the comment and will work with Boards choosing to have contracted slots agreements to provide assistance in developing payment methodologies that ensure sound accounting processes. At this time, TWC is unable to modify The Workforce Information System of Texas (TWIST) to process contracted slots payments. TWC is pursuing a potential replacement of the TWIST child care system and will take this comment into consideration for future automation enhancements.

No changes were made in response to this comment.

Comment: One Board appreciated the flexibility to decide whether or not to enter into contracted slots agreements with providers. The Board also supported the plan to make these contracts available only to Texas Rising Star three- and four-star providers. The Board stated that implementation would require extensive support from TWC in terms of availability of data in order to determine need as required in §809.96(e) and to adhere to the reporting requirements in §809.96(h).

Response: TWC appreciates the comment and will work with Boards choosing to have contracted slots agreements to provide implementation assistance.

No changes were made in response to this comment.

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

Comment: One provider stated that the changes are good. However, the commenter requested that TWC allow time to implement the amended rules.

Response: TWC appreciates your comment and began providing information about these proposed changes in November via three webinars for existing Texas Rising Star providers and one webinar for all providers. These webinars are also posted on TWC's website. TWC encourages all providers to begin familiarizing themselves with this information. When the changes are final, TWC plans to provide additional time for child care programs to become familiar with the changes. Implementation is planned for April 1, 2021; however, all programs will not be required to immediately implement the changes. Texas Rising Star revisions will have a rolling implementation, in which the program will be assessed against the new requirements during its next visit.

No changes were made in response to this comment.

Comment: One organization appreciated TWC's commitment to institute a marketing plan to provide enhanced consumer education so that parents are better educated about the importance of quality and the meaning and value of each higher Texas Rising Star level. The organization hopes that the plan will include consistent messaging around choosing high-quality programs at

each parent touch point--from Agency to Board to contractor, and that the messaging also promotes optimal child development through the use of developmental milestones.

Response: TWC appreciates the input and will take these comments into consideration as TWC finalizes this plan.

No changes were made in response to this comment.

Comment: One Board requested that the rules in Subchapter G be clarified to ensure that it is clear that the clause in §809.135, specifically, "The Texas Rising Star program is not subject to Chapter 823 of this title, the Integrated Complaints, Hearings, and Appeals rules," applies to the Texas Rising Star program as a whole and not just to the Texas Rising Star Process for Reconsideration.

Response: TWC appreciates the comment; however, this requested change is outside the scope of the proposed rulemaking.

§809.130. Short Title and Purpose

Comment: One Board and several commenters supported the reorganizing of Texas Rising Star measures and assigning more weight to the teacher-child interaction category in recognition of its correlation with child outcomes. The commenters support the streamlining of standards and reducing the standards from five to four categories. The commenters believe it will help avoid redundancy and eliminate duplication. Additionally, the commenters support the new reweighting of the categories, so they are most closely correlated with child outcomes, and believe that the heavy focus on teacher-child interactions is paramount to strong childhood outcomes.

Response: TWC appreciates the comment.

Comment: Several commenters requested additional clarification about how the changes in standards impact providers' current and future ratings.

Response: TWC has conducted an initial review of reweighting impacts noting that most impacts resulted in a higher overall star level being determined. However, with the additional revisions of specific measures, scoring methodology for teacher-child interactions, and new measures added, there may be impacts to some programs that TWC is unable to currently quantify. Mentoring, training modules, a director's toolkit of resources, use of the continuous quality improvement plan, and additional supports will be provided to programs to minimize any negative impacts.

No changes were made in response to these comments.

Comment: One advocacy group recommended coupling these requirements with additional resources to support providers in their efforts to improve interactions.

Response: Mentoring, training modules, a director's toolkit of resources, use of the continuous quality improvement plan, and additional supports will be provided to programs.

No changes were made in response to this comment.

§809.131. Eligibility for the Texas Rising Star Program

Comment: Several commenters support requiring current Texas Rising Star programs and applicants to create staff accounts within the WFR. Because of the increased challenges of recruiting and retaining staff, one commenter applauded the recommendation that the WFR not include a searchable database of teachers or their qualifications nor job postings.

Response: TWC appreciates the comments.

Comment: Two Boards requested clarification on potential ramifications on programs that do not comply with the requirement to agree to participate in the WFR and to encourage staff to create accounts within the WFR.

Response: TWC will require that Texas Rising Star child care providers create a director account in the WFR. TWC recommends that Texas Rising Star providers encourage their staff members to create individual accounts within the WFR.

Texas Rising Star staff will work with each provider to set individual CQIP goals to increase staff participation in the WFR. Additionally, mentors can assist in identifying any barriers that may have prevented an individual from creating his or her account.

A director account will be required for each Texas Rising Star provider so that participating staff members may associate their WFR profiles with their employer. However, if an individual staff member declines to create a WFR account, the provider's Texas Rising Star certification will not be affected.

No changes were made in response to these comments.

Comment: One Board supported the purpose behind the TECPDS WFR. However, the Board expressed concerns regarding providers that may not wish to participate due to privacy concerns related to posting information on the systems.

Two providers expressed similar concerns. One provider stated that the idea of a web-based professional development tool that tracks training, education, and employment seems very convenient and easily accessible for staff, employers, and other interested parties such as Child Care Licensing and Child Care Services. However, the provider stated that the information, which is easily accessible to the previously mentioned, can also become accessible to hackers and others who have nefarious intentions.

Sharing information concerning training, employment, and other personal identifying data is a matter of individual choice. Additionally, this is a right of privacy. By mandating enrollment in the WFR in order to participate as a Texas Rising Star provider, each individual's right to privacy is not being upheld.

The other provider stated that the provider can give copies of trainings to the local assessor.

Response: TWC acknowledges commenters' concerns regarding the privacy of their personal data in relation to the WFR. TWC shares these concerns and is committed to ensuring privacy and security of personal data. The WFR registry does not include any search function and access to individual data is controlled, monitored, and audited.

TWC's rule changes related to the WFR are intended to increase use of the WFR to provide TWC and Boards with summative information to support data-driven decisions on the investment of CCQ funds. Additionally, TWC uses the WFR's aggregate workforce data to satisfy federal reporting requirements on the state's annual CCDF Quality Progress Report, which asks for state-level information on the state of and progress of the workforce. [https://twc.texas.gov/files/partners/child-care-quality-performance-report-2019.pdf]

Everyone who creates an account in the WFR owns their own data and decides who can see their data. The database is not searchable by the public. Individuals have the option to share their education, employment, and training information with the directors of centers or facilities that also have accounts, such as

the individual's employer. The individual also has the ability to stop sharing his or her profile with a director.

As stated previously, TWC will require that Texas Rising Star child care providers create a director account in the WFR. The provider may determine who fills the director role in the WFR, and that individual may decide how much employment, education, and training data to include in his or her professional profile.

TWC also recommends that Texas Rising Star providers encourage their staff members to create individual accounts within the WFR. All information entered into the WFR is stored securely and may only be viewed by approved TECPDS/WFR staff and your local Board for the purposes of record validation and to assist assessors with scoring Texas Rising Star staff training/qualifications measures. All of these users are subject to contract provisions that limit their access to the data they need to do their jobs. For example, a Texas Rising Star assessor will only view records for individuals who had associated themselves with a provider with an agreement to provide subsidized child care in the assessor's assigned Board area. TWC staff do not have access to individual WFR records.

UTHealth, which houses the WFR, complies with the Family Educational Rights and Privacy Act, which prohibits the release of most education records without an individual's permission. Additionally, WFR data is governed by the University of Texas Health Science Center's data security standards, which adhere to the National Institute of Standards and Technology (NIST) Cybersecurity regular security scanning for vulnerabilities and an annual NIST security audit.

No changes were made in response to these comments.

Comment: One provider stated that it should not be mandatory to participate in the TECPDS WFR if a center has its own Training Tracking System. The provider suggested instead, that if a center has an electronic program that tracks its staff training, it should not have to use the registry because that would create an increased workload for a duplicate job.

Response: The intent of participation within the WFR is multifaceted, including the integration of automatic scoring for applicable Category 1 measures within the Texas Rising Star assessment tool.

TWC will explore opportunities to create interface capabilities between the WFR and providers' individual systems in order to reduce duplicate data entry.

No changes were made in response to this comment.

§809.132. Impact of Certain Deficiencies on Texas Rising Star Certification

Comment: Two Boards expressed concerns regarding certain aspects of the impact of licensing deficiencies. One Board expressed concerns that some deficiencies regarding the safety of children were not included. One Board is concerned that four probationary impacts during a three-year certification period decreases motivation to resolve issues when there is no financial impact to the program and would suggest reducing to three the number of probationary impacts during the three-year certification period.

Response: TWC recognizes that these standards contain elements that are supported by some, while others would prefer modifications. TWC has crafted these changes based on extensive discussions and input from the Texas Rising Star Workgroup. TWC will monitor the impact of these changes, including how many probationary periods providers are subject to, and determine if revisions are needed in the future.

No changes were made in response to these comments.

Comment: Several commenters supported a revised structure that continues to provide a high level of accountability for the most critical licensing issues, while also providing the opportunity for providers to correct issues without losing their star-level certification. Specifically, the group requested Texas Rising Star programs that receive licensing deficiencies have an opportunity to remedy those deficiencies within a six-month probationary period. Providers need increased technical assistance for programs at risk of losing or dropping their certification level.

Response: The revised screening form minimized the number of deficiencies that resulted in an immediate star-level drop and modified the impact for most to be placed on probation while receiving targeted assistance to address future compliance.

No changes were made in response to these comments.

Comment: One commenter appreciated the openness to consider COVID-19 in assessment and recommended that TWC provide adequate support and mentorship to better support providers.

The commenter also appreciated the recommendation to minimize deficiencies from ten to four that result in immediate star-level impact as well as the recommendation to institute probationary rather than star-level impacts in situations in which an employee is fired for inadequate care. The commenter further suggested that providers that have a proven record of exemplary star ratings be considered for a less stringent annual assessment. The commenter also stated that Texas Rising Star programs that receive licensing deficiencies that do not compromise child safety get an opportunity to remedy those deficiencies within a six-month probationary period.

Response: TWC appreciates the comments. Regarding adequate support and mentorship to support providers, TWC will provide coaching, credentialing, training modules, a mentor's toolkit of resources, and additional supports to mentors to assist in supporting programs during this time.

Regarding the impact of deficiencies on providers with a proven record of exemplary star rating being considered for less stringent annual assessment and providing opportunities to providers to remedy certain deficiencies within a certain period, TWC will make a future determination on modifications to annual assessments for providers that have a proven record of exemplary star rating.

No changes were made in response to these comments.

Comment: One Board supported the new approach on licensing deficiencies that allows providers to remedy deficiencies and maintain their star level or certification as this promotes financial stability. The Board asked if HHSC has evaluated inner-rater reliability to ensure consistency. Some providers have stated that some CCL representatives are more lenient on some standards.

Response: TWC appreciates your feedback. HHSC processes are not addressed in this rulemaking.

§809.133. Application and Assessments for the Texas Rising Star Program

Comment: One Board and several commenters support the development of a statewide Texas Rising Star Continuous Quality Improvement (CQI) framework. The Board expressed apprecia-

tion of the enhancement that will allow CLI Engage to automatically generate CQI documents that will better define needed areas of improvement, while allowing Texas Rising Star mentor staff the flexibility to address staff-specific needs.

Several commenters stated that the Texas Rising Star CQI framework will provide targeted technical assistance and customized coaching to help providers work toward achieving higher levels of quality. The group requested additional details on how the CQI framework will be implemented, and whether there will be an opportunity to provide input on how the framework should look.

Response: TWC appreciates the support. A draft CQI document is available for review on the TWC Texas Rising Star 4-Year Review webpage.

No changes were made in response to these comments.

§809.134. Minimum Qualifications for Texas Rising Star Staff

Comment: One Board asked whether a staff member's education level and years of experience will be taken into consideration when determining who needs to attend the training or will automatically qualify staff for some credentialing badges. The Board stated the different levels of education and experience should also be weighed when determining staff training.

Response: All mentors and assessors must take the Texas Rising Star Assessment Training course, regardless of education and experience. All Texas Rising Star assessors will be required to pass the test and achieve a Texas Rising Star Assessment certification. This will ensure all staff are trained and assessors are certified on the Texas Rising Star certification program, thus ensuring reliable and valid assessment scoring.

No changes were made in response to this comment.

Comment: One Board asked what are TWC's expectations if a Texas Rising Star staff member at the contractor or Board level does not achieve certification as an assessor. Currently hired staff were not required to pass any type of certifications, and imposing this requirement now may cause issues for employers.

Response: Statewide training for Texas Rising Star staff on the revisions will begin in January 2021, followed by a period for assessor staff to attain certification. Assessors are expected to pass all ten modules, and to attain their certification prior to the roll-out date for the new standards, which is scheduled for April 1, 2021. Assistance will be provided to assessor staff throughout the certification course to assist in increasing their knowledge, skills, and abilities so they can receive certification. This will include the availability of online training content, self-study online modules, small group-facilitated sessions, and peer learning communities. However, if the staff member still cannot become certified, employers should consider utilizing the staff member in a different role.

No changes were made in response to this comment.

Comment: Several commenters supported ensuring that all mentors and assessors complete the required certification as it will improve the reliability and ratings. The commenters requested that assessments be centralized under TWC to help ensure program reliability. The commenters encourage TWC to develop partnerships between TWC and Boards to strengthen the mentor and assessor collaboration and consistency.

Response: TWC appreciates the input. In order to centralize Texas Rising Star assessors, the Texas Government Code, §2308.3155, must be amended. TWC has included this in its legislative proposals to the 87th Texas Legislature.

No changes were made in response to these comments.

Comment: One Board requested that there should be training or certification requirements for Texas Rising Star program directors. Because directors are the leaders of their programs, to properly maintain Texas Rising Star standards, the Board believes that it is just as, if not more than, important for them to be certified to lead a Texas Rising Star program.

Response: TWC appreciates the input. The current measure in the Texas Rising Star guidelines for director training is being removed and integrated into the continuous quality improvement plan, which is individualized to the director and program's specific needs and goals.

No changes were made in response to this comment.

Comment: One Board expressed concern that, by imposing certain education requirements, work experience, and annual training-hour requirements for Texas Rising Star mentor and assessor staff, TWC is subverting local control of Boards (as the employer of record) to hire staff they believe are qualified to meet the demands of these positions. The Board requested TWC to evaluate the existing and proposed criteria to ensure they are not in violation of Title VII, which prohibits employers from using neutral tests or selection procedures that have the effect of disproportionately excluding individuals based on race, color, religion, sex (including sexual orientation and gender identity), or national origin if the tests or selection procedures are not "job-related for the position in question and consistent with business necessity." To that end, the Board encouraged TWC to review the current composition of mentors and assessors to determine if, in fact, it has potentially eliminated from consideration individuals in a disparate manner.

Response: Title VII prohibit employers from using neutral tests or selection procedures that have the effect of disproportionately excluding individuals based on race, color, religion, sex, or national origin if the tests or selection procedures are not job-related for the position in question and consistent with business necessity. The education and certification requirements for Texas Rising Star mentors and assessors are directly related to their job duties.

Regarding the new certification requirement for assessors, assistance will be provided to any assessor who is unable to pass a training module to help them achieve certification status. TWC's intent is to provide ample support and resources to Texas Rising Star staff who need additional assistance in mastering the competencies needed to serve as a Texas Rising Star assessor.

Mentors and assessors are responsible for making important determinations of a child care program's quality status, based on multiple measures and factors. Therefore, it is critical that the child care program has highly qualified staff, as their judgements impact a child care provider's Texas Rising Star certification. TWC also notes that other occupations have similar job-related education and certification requirements.

Boards may also wish to consider any opportunities they have to support their staff in the pursuit of their required education levels. Many employers, including TWC, offer education stipends/tuition assistance programs.

No changes were made in response to this comment.

PART IV. STATUTORY AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §809.2

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 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 5, 2021.

TRD-202100075
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: January 25, 2021
Proposal publication date: October 23, 2020
For further information, please call: (512) 936-6478

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SUBCHAPTER B. GENERAL MANAGEMENT

40 TAC §§809.12, 809.13, 809.16, 809.18, 809.19, 809.22

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 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.

§809.16. Quality Improvement Activities.

(a) Child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, Subchapter B of this title (relating to Allocations), 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 in accordance with 45 CFR Part 98, §98.53, 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.

§809.19. Assessing the Parent Share of Cost.

(a) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, Subchapter B of this title (relating to Allocations), 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) of this paragraph.

(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 redetermined 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--certified provider. Such Board policy shall ensure:

(1) that the parent continue to receive the reduction if:

(A) the Texas Rising Star provider loses Texas Rising Star certification; or

(B) the parent moves or changes employment within the workforce area and no Texas Rising Star--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--certified provider to a non-Texas Rising Star--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 who 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 5, 2021.

TRD-202100076
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: January 25, 2021
Proposal publication date: October 23, 2020
For further information, please call: (512) 936-6478

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SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

40 TAC §§809.91, 809.93, 809.96

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 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 5, 2021.

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Les Trobman
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 936-6478

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SUBCHAPTER G. TEXAS RISING STAR PROGRAM

40 TAC §§809.130 - 809.134, 809.136

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 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 5, 2021.

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Les Trobman
General Counsel
Texas Workforce Commission
Effective date: January 25, 2021
Proposal publication date: October 23, 2020
For further information, please call: (512) 936-6478

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CHAPTER 823. INTEGRATED COMPLAINTS, HEARINGS, AND APPEALS

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 823, relating to Integrated Complaints, Hearings, and Appeals, without changes, as published in the October 23, 2020, issue of the *Texas Register* (45 TexReg 7566):

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 adopts the following new section of Chapter 823, relating to Integrated Complaints, Hearings, and Appeals, without changes, as published in the October 23, 2020, issue of the *Texas Register* (45 TexReg 7566):

Subchapter D. Agency-Level Decisions, Reopenings, and Rehearings, §823.34

These rules will not be republished.

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 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 adopts 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 §823.1(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 adopts 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 adopts 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 adopts 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 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 observers 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.

TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The public comment period ended on November 23, 2020. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§823.1 - 823.4

STATUTORY AUTHORITY

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 implement the appeal, complaint, and grievance provisions set forth in Texas Labor Code, Title 4, Subtitle B, §301.192 and Texas Human Resources Code, §44.002, as well as those set forth in 29 USC §3241 and 29 USC §3152.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 5, 2021.

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Les Trobman
General Counsel
Texas Workforce Commission
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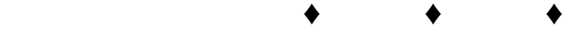

SUBCHAPTER B. BOARD COMPLAINT AND APPEAL PROCEDURES

40 TAC §§823.10 - 823.14

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 implement the appeal, complaint, and grievance provisions set forth in Texas Labor Code, Title 4, Subtitle B, §301.192 and Texas Human Resources Code, §44.002, as well as those set forth in 29 USC §3241 and 29 USC §3152.

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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Les Trobman
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 936-6478

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SUBCHAPTER C. AGENCY COMPLAINT AND APPEAL PROCEDURES

40 TAC §§823.20 - 823.22, 823.24

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 implement the appeal, complaint, and grievance provisions set forth in Texas Labor Code, Title 4, Subtitle B, §301.192 and Texas Human Resources Code, §44.002, as well as those set forth in 29 USC §3241 and 29 USC §3152.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 5, 2021.

TRD-202100081
Les Trobman
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 936-6478

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SUBCHAPTER D. AGENCY-LEVEL DECISIONS, REOPENINGS, AND REHEARINGS

40 TAC §§823.30 - 823.32, 832.34

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 implement the appeal, complaint, and grievance provisions set forth in Texas Labor Code, Title 4, Subtitle B, §301.192 and Texas Human Resources Code, §44.002, as well as those set forth in 29 USC §3241 and 29 USC §3152.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 5, 2021.

TRD-202100082
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: January 25, 2021
Proposal publication date: October 23, 2020
For further information, please call: (512) 936-6478

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Texas

Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Workforce Commission

Title 40, Part 20

The Texas Workforce Commission (TWC) adopts the review of Chapter 804, Jobs and Education for Texans (JET) Grant Program, in accordance with Texas Government Code, §2001.039. The proposed notice of intent to review the rules was published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 5016).

No comments were received on the proposed rule review.

TWC has assessed whether the reasons for adopting or readopting the rules continue to exist. TWC finds that the rules in Chapter 804 are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist. TWC, therefore, readopts Chapter 804, Jobs and Education for Texans (JET) Grant Program.

TRD-202100100
Les Trobman
General Counsel
Texas Workforce Commission
Filed: January 6, 2021

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The Texas Workforce Commission (TWC) adopts the review of Chapter 807, Career Schools and Colleges, in accordance with Texas Government Code, §2001.039. The proposed notice of intent to review the rules was published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 5016).

No comments were received on the proposed rule review.

TWC has assessed whether the reasons for adopting or readopting the rules continue to exist. TWC finds that the rules in Chapter 807 are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist. TWC, therefore, readopts Chapter 807, Career Schools and Colleges.

TRD-202100101
Les Trobman
General Counsel
Texas Workforce Commission
Filed: January 6, 2021

♦ ♦ ♦

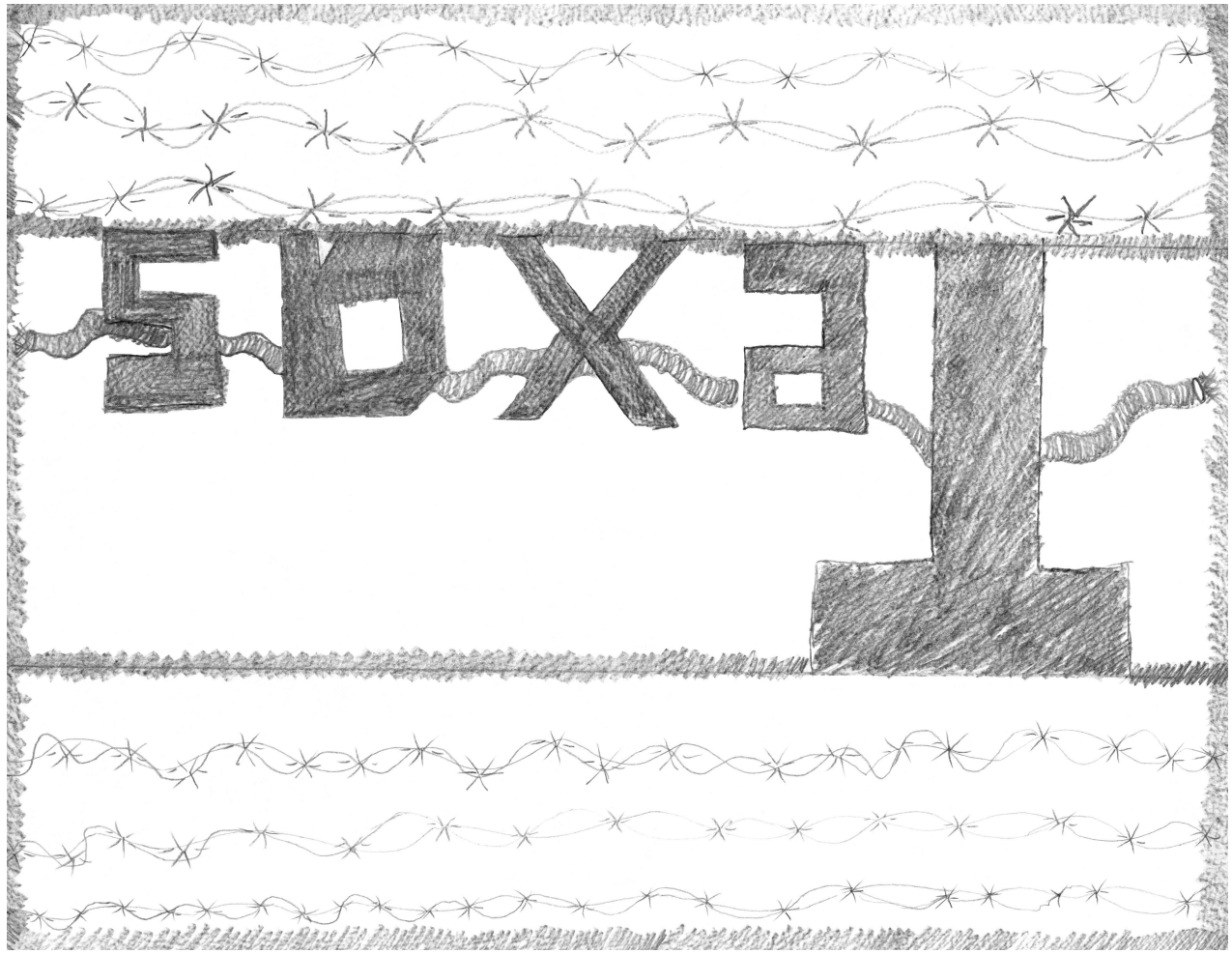
The Texas Workforce Commission (TWC) adopts the review of Chapter 858, Procurement and Contract Management Requirements for Purchase of Goods and Services for Vocational Rehabilitation Services, in accordance with Texas Government Code, §2001.039. The proposed notice of intent to review the rules was published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 5017).

No comments were received on the proposed rule review.

TWC has assessed whether the reasons for adopting or readopting the rules continue to exist. TWC finds that the rules in Chapter 858 are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist. TWC, therefore, readopts Chapter 858, Procurement and Contract Management Requirements for Purchase of Goods and Services for Vocational Rehabilitation Services.

TRD-202100102
Les Trobman
General Counsel
Texas Workforce Commission
Filed: January 6, 2021

♦ ♦ ♦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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure 1: 28 TAC §5.9970(b)

CONSUMER BILL OF RIGHTS

Personal Automobile Insurance

What is the Bill of Rights?

It is a basic outline of important rights you have under Texas law. Insurance companies must give you this Bill of Rights with your policy. It is important to read and understand your policy.

The Bill of Rights is not:

- A complete list of all your rights,
- Part of your policy, or
- A list of everything that you are responsible for.

Questions about these rights?

- If you are not sure about anything in your policy, ask your agent or insurance company.
- If you have questions or a complaint, contact the Texas Department of Insurance (TDI) at:

  Phone: 1-800-252-3439
  Email: ConsumerProtection@tdi.texas.gov
  Website: www.tdi.texas.gov/consumer
  Mail: Consumer Protection MC 111-1A
  P.O. Box 149091
  Austin, TX 78714-9101

- To learn more about insurance, visit www.opic.texas.gov or call the Office of Public Insurance Counsel (OPIC) at 1-877-611-6742.

AVISO: Este documento es un resumen de sus derechos como asegurado. Tiene derecho a llamar a su compañía de seguros y obtener una copia de estos derechos en español. Además, puede ser que su compañía de seguros tenga disponible una versión de su póliza en español.

Table of Contents

Where to Get Information

1. **Your insurance company.** When you get a copy of your policy you will also get an "Important Notice" from the company. The notice explains how to contact your company and how to file a complaint. You may request a complete copy of your policy from your company at any time.

2. **Your declarations page.** The declarations page, also called the "dec page," shows: (a) the name and address of your insurance company, (b) the dates your policy is in effect, (c) the insured vehicles and drivers, (d) any excluded drivers, (e) the amounts and types of coverage, and (f) your deductibles.

3. **The Texas Department of Insurance (TDI).** You have the right to call TDI for free at 1-800-252-3439 for information and help with a complaint against an insurer. You can also find information on the TDI website at www.tdi.texas.gov.

4. **Resources for shopping for insurance.** The Office of Public Insurance Counsel (OPIC) and TDI developed www.HelpInsure.com to help you compare rates and coverages for different insurance companies. OPIC also has an online tool to help you compare policies. You can find this policy comparison tool at www.opic.texas.gov.

What You Should Know When You File a Claim

5. **Choice of repair shop and replacement parts.** You have the right to choose the repair shop and parts for your vehicle. An insurance company may not specify the brand, type, kind, age, vendor, supplier, or condition of parts or products used to repair your auto, but they are not required to pay more than a reasonable amount.

6. **Auto repair notice requirements.** The insurance company must provide you a document about your rights regarding auto repairs as follows:
    - **Claims submitted by telephone:** Written notice within 3 business days or verbal notice during the call, followed by written notice within 15 business days;
    - **Claims submitted in person:** Written notice at the time you present your vehicle to an insurer, an insurance adjuster, or other person in connection with a claim for repair; or
    - **Claims submitted in writing (including email and fax):** Written notice must be provided within 3 business days of the insurance company receiving notice of the claim.

7. **Deadlines for processing claims and payments.** When you file a claim on your own policy, the insurance company must meet these deadlines:
    - **Within 15 days after you file a claim:** The company must let you know they received your claim. The company must also start their investigation and ask you for any other information they need.
    - **Within 15 business days after they get all the information they need:** The company must approve or deny your claim in writing. They can extend this deadline up to **45 days** from the date they: (a) let you know they need more time and (b) tell you why.
    - **Within 5 business days after they let you know your claim is approved**: The company must pay the claim.

    Note: TDI can extend these deadlines by 15 more days if there is a weather-related catastrophe.

If your company fails to meet these deadlines, you may be able to collect the claim amount, interest, and attorney's fees.

8. **Written explanation of claim denial.** Your insurance company must tell you in writing why your claim or part of your claim was denied.

9. **Information not required for processing your claim.** Your insurance company can only ask for information reasonably needed for their claim investigation. However, they cannot ask for your federal income tax returns unless: (a) they get a court order or (b) your claim involves a fire loss, loss of profits, or lost income.

10. **Reasonable investigation.** Your insurance company cannot refuse to pay your claim without a reasonable investigation of the claim. You should keep records of all claim communications (including notes from phone calls) and other claim documentation (including damage estimates and receipts).

11. **Deductible recovery.** If another person may be liable for the damage to your auto and you (a) filed a claim, and (b) paid or owe a deductible on your own policy, then your insurance company must:
    - Take action to recover your deductible no later than 1 year from when your claim is paid; or
    - Refund your deductible; or
    - Notify you that they will not take action and allow you to try to collect your money (a) within 1 year from that date your claim is paid, or (b) at least 90 days before the statute of limitations expires (whichever date comes first).

12. **Notice of liability claim settlement.** Liability means you are responsible for other people's injuries or damage to their property. Your insurance company must let you know in writing:
    - About the first offer to settle a claim against you within **10 days** after the offer is made.
    - About any claim settled against you within **30 days** after the date of the settlement.

Who to Contact for Claim Disagreements

13. **Claim disagreements.** You can dispute the amount of your claim payment or what is covered under your policy. You can:
    - Contact your insurance company.
    - Contact the repair person or shop.
    - Contact an attorney to advise you of your rights under the law. The State Bar of Texas can help you find an attorney.
    - Pay a qualified appraiser to examine the damage to your property.
    - File a complaint with TDI.

What You Should Know about Renewal, Cancellation, and Nonrenewal

Renewal means that your insurance company is extending your policy for another term.

Cancellation means that, **before the end of the policy period**, the insurance company:

- Terminates the policy;
- Gives you less coverage or limits your coverage; or
- Refuses to give additional coverage that you are entitled to under the policy.

"**Refusal to renew**" and "**nonrenewal**" are terms that mean your coverage ends **at the end of the policy period**. The policy period is shown on the declarations page of your policy.

14. **Offer of uninsured/underinsured motorist and personal injury protection coverages.** Insurance companies must offer you Uninsured/Underinsured Motorist (UM/UIM) and Personal Injury Protection (PIP) coverage on a new policy. If you decline them, it must be in writing. The company is not required to reoffer these coverages upon renewal, but you may request them at any time.

15. **Insurance company cancellation of personal automobile policies.** If your policy has been in effect for **60 days or more**, your company can only cancel your policy if:
    - You don't pay your premium when it is due;
    - You file a fraudulent claim;
    - TDI decides that keeping the policy violates the law;
    - Your driver's license or vehicle registration is suspended or revoked (unless you agree to exclude coverage for yourself as a driver under the policy); or
    - Any driver who lives with you, or who usually drives a vehicle covered by the policy, has their driver's license or vehicle registration suspended or revoked (unless you agree to exclude coverage for that person as a driver under the policy).

16. **Notice of cancellation.** If your insurance company cancels your policy, they must let you know by mail at least **10 days** before the effective date of the cancellation. Check your policy because your company may give you more than 10 days' notice.

17. **Your right to cancel.** You can cancel your policy at any time and get a refund of the unused premium.

18. **Refund of premium.** If you or your insurance company cancel your policy before it ends, the company must refund any unused premium.
    - If the company cancels, they have **15 business days** from the day they cancel your policy.
    - If you ask to cancel your policy, the company has **15 business days** from the day you want the policy to end.

    You must let your company know you want the refund sent to you. If not, they may refund the remaining premium by giving you a premium credit on the same policy.

19. **Limits on using claims history to change premium**. Your insurance company can't change your premium solely because of a claim you file that is not paid or payable under your policy.

20. **Timing of nonrenewal.** Your insurance company must renew your policy until it has been in effect for 1 year. If your policy is renewed, your company must continue to renew your policy until the yearly anniversary of the original effective date.

    For example, if your six-month policy was originally effective on January 1, 2050, your company must renew your policy until January 1, 2051. After that, your company may only refuse to renew your policy on the original effective date (in this example, January 1) of any future year.

21. **Notice of nonrenewal.** Your insurance company must send you a notice that they are not renewing your policy. They must let you know at least **30 days** before your policy expires, or you can require them to renew your policy.

22. **Not-at-fault claims.** Your insurance company cannot refuse to renew your policy solely because of any one of the following:

    - Claims involving damage from a weather-related incident that do not involve a collision, like damage from hail, wind, or flood.
    - Accidents or claims involving damage by contact with animals.
    - Accidents or claims involving damage caused by flying gravel, missiles, or other flying objects. However, if you have 3 of these claims in a three-year period, the company may increase your deductible on your next annual renewal date.
    - Towing and labor claims. However, once you have made 4 of these claims in a three-year period, the company may remove this coverage from your policy on your next annual renewal date.
    - Any other accident or claim that cannot reasonably be considered your fault, unless you have 2 of these claims or accidents in a one-year period.

23. **Limit on using credit information to nonrenew your policy.** An insurance company cannot refuse to renew your policy solely because of your credit.

24. **Limit on using age to nonrenew your policy.** An insurance company cannot refuse to renew your policy based solely on the age of any person covered by the policy. Your company also cannot require you to exclude a family member from coverage solely because they reached driving age.

25. **Protections from discrimination.** An insurance company cannot refuse to insure you; limit the coverage you buy; refuse to renew your policy; or charge you a different rate based on your race, color, creed, country of origin, or religion.

26. **Right to ask questions.** You can ask your insurance company a question about your policy. They cannot use your questions to deny, nonrenew, or cancel your coverage. Your questions also cannot be used to determine your premium.

    For example, you may ask:

    - General questions about your policy;
    - Questions about the company's claims filing process; and
    - Questions about whether the policy will cover a loss, unless the question is about damage: (a) that occurred and (b) that results in an investigation or claim.

27. **Notice of a "material change" to your policy.** If your insurance company does not want to cancel or nonrenew your policy, but wants to make certain material changes, then they must explain the changes in writing at least **30 days** before the annual renewal date**.** Material changes include:

    - Giving you less coverage;
    - Changing a condition of coverage; or
    - Changing what you are required to do.

    Instead of a notice of "material change" a company may choose to not renew your existing policy. If so, the company has to send a nonrenewal letter, but may still offer you a different policy.

Note: A company cannot reduce coverage during the policy period unless you ask for the change. If you ask for the change, the company does not have to send you a notice.

28. **Written explanation of cancellation or nonrenewal.** You can ask your insurance company to tell you in writing the reasons for their decision to cancel or not renew your policy. The company must explain in detail why they cancelled or nonrenewed your policy.

Figure 2: 28 TAC §5.9970(b)

DECLARACIÓN DE DERECHOS DEL CONSUMIDOR

Seguro de Automóvil Personal

¿Qué es la Declaración de Derechos?

Es un resumen básico de los derechos importantes que tiene bajo la ley de Texas. Las compañías de seguros tienen que darle una copia de esta Declaración de Derechos junto con su póliza. Es importante leer y entender su póliza.

La Declaración de Derechos ***no es***:

- Una lista completa de todos sus derechos,
- Parte de su póliza, o
- Una lista de todas sus obligaciones.

¿Tiene preguntas sobre estos derechos?

- Si tiene una duda sobre algún aspecto de su póliza, consulte a su agente o a la compañía de seguros.
- Si tiene preguntas o alguna queja, comuníquese con el Departamento de Seguros de Texas (Texas Department of Insurance (TDI), por su nombre y siglas en inglés) al:

  Teléfono: 1-800-252-3439

  Correo electrónico: ConsumerProtection@tdi.texas.gov

  Sitio web: www.tdi.texas.gov/consumer

  Correo Postal: Consumer Protection MC 111-1A
  P.O. Box 149091
  Austin, TX 78714-9101

- Para obtener más información sobre seguros, visite www.opic.texas.gov o llame a la Oficina del Asesor Público de Seguros (Office of Public Insurance Counsel (OPIC), por su nombre y siglas en inglés) al 1-877-611-6742.

AVISO: Si recibe algún documento en inglés, llame a su agente o compañía de seguros y pregunte si lo tienen disponible en español.

Tabla de Contenido

Dónde obtener información:

1. **La compañía de seguros.** Cuando reciba una copia de su póliza, también recibirá un "Aviso Importante" de la compañía. El aviso explica cómo ponerse en contacto con la compañía y cómo presentar una queja. Puede solicitar una copia completa de su póliza a la compañía en cualquier momento.

2. **La página de declaraciones.** La página de declaraciones, también llamada "página de dec," muestra: (a) el nombre y la dirección de la compañía de seguros, (b) las fechas efectivas de su póliza, (c) los vehículos y conductores asegurados, (d) cualquier conductor que esté excluido, (e) las cantidades y tipos de cobertura, y (f) sus deducibles.

3. **El Departamento de Seguros de Texas (TDI).** Tiene derecho a llamar gratis a TDI al 1-800-252-3439 para obtener información y ayuda sobre una queja contra una aseguradora. También puede encontrar información en el sitio web de TDI en www.tdi.texas.gov.

4. **Recursos para ayudarlo a comprar seguro.** La Oficina del Asesor Público de Seguros (OPIC) y TDI establecieron el sitio web www.HelpInsure.com para ayudarlo a comparar tarifas y coberturas de diferentes compañías de seguros. OPIC también tiene una herramienta en línea para ayudarlo a comparar las pólizas. Puede encontrar esta herramienta de comparación de pólizas en www.opic.texas.gov.

Lo que debería saber al presentar una reclamación

5. **Selección del taller de reparación y las piezas de repuesto.** Tiene derecho a elegir el taller de reparación y las piezas para su vehículo. La compañía de seguros no puede especificar la marca, el estilo, el tipo, la edad, el surtidor, el proveedor o la condición de las piezas o productos utilizados para reparar su auto, pero la aseguradora no está obligada a pagar más del costo razonable.

6. **Avisos requeridos sobre la reparación de autos.** La compañía de seguros tiene que entregarle un documento acerca de sus derechos respecto a la reparación de autos, como se indica a continuación:

    - **Reclamaciones presentadas por teléfono:** Aviso por escrito dentro de los 3 días hábiles o aviso verbal durante la llamada, seguido de un aviso por escrito dentro de los 15 días hábiles;
    - **Reclamaciones presentadas en persona:** Aviso por escrito en el momento en que presente su vehículo a la compañía aseguradora, al ajustador de seguros o a cualquier otra persona acerca de una reclamación sobre reparaciones; o
    - **Reclamaciones presentadas por escrito (incluyendo correo electrónico y fax):** Aviso por escrito dentro de los 3 días hábiles a partir de la fecha en que la compañía de seguros recibe la notificación de la reclamación.

7. **Plazos para tramitar reclamaciones y pagos.** Cuando presente una reclamación bajo su propia póliza, la compañía de seguros tendrá que cumplir con los siguientes plazos:

    - **Dentro de los 15 días después de la presentación de una reclamación:** La compañía tendrá que informarle que recibió su reclamación. La compañía también tendrá que comenzar su investigación y pedirle cualquier otra información que necesita.
    - **Dentro de los 15 días hábiles después de recibir toda la información necesaria:** La compañía tendrá que aprobar o rechazar su reclamación por escrito. Pueden extender este plazo hasta 45 días a partir de la fecha en que: (a) le informan que necesitan más tiempo y (b) le indican la razón.
    - **Dentro de 5 días hábiles después de que le informen que su reclamación ha sido aprobada:** La compañía tendrá que pagar la reclamación.

    Nota: TDI puede extender estos plazos por 15 días más si ocurre una catástrofe relacionada con el clima.

Si la compañía no cumple con estos plazos, podría recibir la cantidad especificado en la reclamación, así como los intereses y los honorarios de los abogados.

8. **Explicación por escrito de la denegación de la reclamación.** La compañía de seguros tendrá que informarle por escrito por qué se rechazó su reclamación o alguna parte de su reclamación.

9. **Información no requerida para procesar su reclamación.** La compañía de seguros puede solicitar únicamente información que sea razonablemente necesaria para hacer la investigación de su reclamación. Sin embargo, no pueden solicitar sus declaraciones de impuestos federales, a menos que: (a) obtengan una orden judicial o (b) su reclamación implique una pérdida por incendio, pérdida de ganancias o pérdida de ingresos.

10. **Investigación razonable.** La compañía de seguros no puede negarse a pagar su reclamación sin hacer una investigación razonable de la reclamación. Debe mantener registros de todas las comunicaciones de reclamos (incluidas las notas de llamadas telefónicas) y otra documentación de reclamos (incluidos los estimados de daños y recibos).

11. **Recuperación del deducible.** Si otra persona pudiera tener responsabilidad legal por el daño a su auto y usted (a) presentó una reclamación y (b) pagó o está obligado a pagar un deducible bajo su propia póliza, entonces su compañía de seguros tendrá que:

    - Tomar medidas para recuperar su deducible a más tardar 1 año después de que se paga su reclamación; o
    - Reembolsar su deducible; o
    - Informarle que no se tomarán más medidas y que le permitirán que usted trate de cobrar su dinero (a) dentro de 1 año a partir de la fecha en que se paga su reclamación, o (b) al menos 90 días antes de que se venza el plazo para tomar acción legal (lo que suceda primero).

12. **Aviso de que se llegó a un acuerdo sobre la reclamación de responsabilidad.** Responsabilidad significa que usted es responsable de las lesiones o daños a la propiedad de otras personas. La compañía de seguros tiene que informarle por escrito:

    - Acerca de la primera oferta para resolver una reclamación contra usted dentro de los **10 días** después de la fecha en que se hizo la oferta.
    - Acerca de cualquier reclamación decidida en su contra dentro de los **30 días** después de la fecha del acuerdo.

Con quién hablar si hay desacuerdos sobre las reclamaciones

13. **Desacuerdos sobre reclamaciones.** Puede disputar la cantidad que le pagan en su reclamación o lo que está cubierto en su póliza. Usted puede:

    - Comunicarse con la compañía de seguros.
    - Comunicarse con el técnico de reparaciones o con el taller.
    - Comunicarse con un abogado para que le aconseje sobre sus derechos bajo la ley. El Colegio de Abogados del Estado de Texas (The State Bar of Texas, por su nombre en inglés) puede ayudarlo a buscar un abogado.
    - Contratar a un tasador calificado para que examine los daños a su propiedad.
    - Presentar una queja al Departamento de Seguros de Texas (TDI).

Lo que debería saber sobre la renovación, la cancelación y la no renovación

La **renovación** significa que la compañía de seguros extiende su póliza por un período adicional.

La **cancelación** significa que, **antes de llegar al final del período de la póliza**, la compañía de seguros:

- Termina la póliza;
- Le ofrece menos cobertura o limita su cobertura; o
- Se niega a darle cobertura adicional a la cual tiene derecho bajo su póliza.

"Negar la renovación" y **"no renovación"** son términos que significan que su cobertura termina **al final del período de la póliza**. El período de la póliza aparece en la página de declaraciones de su póliza.

14. **Oferta de cobertura de protección contra conductores sin seguro/con insuficiente seguro y de protección para reclamaciones de lesiones personales.** En una nueva póliza, las compañías de seguros tienen que ofrecerle cobertura de Proctección contra Conductores sin Seguro o con Insuficiente Seguro (Uninsured Motorists Coverage (UM/UIM), por su nombre y siglas en inglés) y Protección para Lesiones Personales (Personal Injury Protection (PIP), por su nombre y siglas en inglés). Si rechaza esta cobertura, lo tiene que hacer por escrito. La compañía no está obligada a volver a ofrecerle estas coberturas al momento de la renovación, pero usted puede solicitarlas en cualquier momento.

15. **Cancelación por parte de la compañía de seguros de su póliza de auto personal.** Si su póliza ha estado vigente por **60 días o más**, la compañía solo puede cancelar su póliza si:
    - No paga su prima en la fecha indicada;
    - Presenta una reclamación fraudulenta;
    - TDI decide que mantener la póliza viola la ley.
    - Se le suspende o revoca su licencia de conducir o el registro de su vehículo (a menos que acepte excluirse a sí mismo de la cobertura como conductor bajo la póliza); o
    - Se le suspende o revoca la licencia de conducir o el registro de vehículo a cualquier conductor que viva con usted, o que generalmente maneje un vehículo cubierto bajo la póliza (a menos que acepte excluir a esa persona de la cobertura como conductor bajo la póliza).

16. **Aviso de cancelación.** Si la compañía de seguros cancela su póliza, tendrá que informarle por correo al menos **10 días** antes de la fecha en que se haga efectiva la cancelación. Revise su póliza porque es posible que su compañía de seguros le ofrezca más de 10 días de notificación.

17. **Su derecho a cancelar.** Puede cancelar su póliza en cualquier momento y obtener un reembolso de la prima no utilizada.

18. **Reembolso de la prima.** Si usted o la compañía de seguros cancela su póliza antes de que finalice, la compañía tendrá que reembolsarle cualquier prima no utilizada.
    - Si la compañía cancela, tienen que reembolsarle la prima dentro de los **15 días hábiles** a partir del día en que cancelan su póliza.
    - Si usted pide cancelar su póliza, tienen que reembolsarle la prima dentro de los **15 días hábiles** a partir del día en que usted desee que finalice la póliza.

    Tiene que informarle a la compañía que desea que se le envíe el reembolso. De lo contrario, podrían reembolsarle la prima restante ofreciéndole un crédito de prima en la misma póliza.

19. **Limitación al uso de su historial de reclamaciones para hacer cambios a la prima.** La compañía de seguros no puede cambiar su prima solo porque presentó una reclamación que no le pagó o que no se le pudo pagar bajo su póliza.

20. **Fechas relacionadas a la no renovación.** La compañía de seguros está obligada a renovar su póliza hasta que esté en vigencia por un año. Si le renuevan su póliza, la compañía de seguros tiene que seguir renovándola hasta llegar al aniversario de la fecha original en que se hizo efectiva.

    Por ejemplo, si su póliza de seis meses se hizo efectiva originalmente el 1 de enero del 2050, la compañía tiene que renovar su póliza hasta el 1 de enero del 2051. A partir de esa fecha, la compañía solo puede negarse a renovar su póliza en la fecha original en que se hizo efectiva (en este ejemplo, el 1 de enero) de cualquier año futuro.

21. **Aviso de no renovación.** La compañía de seguros tiene que enviarle un aviso de que no van a renovar su póliza. Tendrá que informarle al menos **30 días** antes del vencimiento de su póliza, o usted puede exigir que renueven su póliza.

22. **Reclamaciones sin culpa.** La compañía de seguros no puede negarse a renovar su póliza solo por darse uno de los siguientes hechos:

    - Reclamaciones referentes a daños por accidentes relacionados al clima que no tienen que ver con un choque, tal como daños por granizo, viento o inundación.
    - Accidentes o reclamaciones que tengan que ver con daños por contacto con animales.
    - Accidentes o reclamaciones que tengan que ver con daños causados por grava voladora, proyectiles o algún otro objeto volador. Sin embargo, si tiene 3 reclamaciones de este tipo en un período de tres años, la compañía puede aumentar su deducible en su próxima fecha de renovación anual.
    - Reclamaciones para cubrir gastos de grúa y de mano de obra. Sin embargo, una vez que haya presentado 4 reclamaciones de este tipo en un período de tres años, la compañía puede eliminar esta cobertura de su póliza en su próxima fecha de renovación anual.
    - Cualquier otro accidente o reclamación que razonablemente no se pueda considerar que haya sido culpa suya, a menos que tenga 2 reclamaciones o accidentes de este tipo en un período de un año.

23. **Limitación al uso de información crediticia para no renovar su póliza.** La compañía de seguros no puede negarse a renovar su póliza únicamente debido a la condición de su crédito.

24. **Limitación al uso de la edad para no renovar su póliza.** La compañía de seguros no puede negarse a renovar su póliza basándose únicamente en la edad de cualquier persona cubierta bajo la póliza. Su compañía tampoco puede exigirle que excluya a un miembro de su familia de la cobertura únicamente porque llegó a la edad de conducir.

25. **Protecciones contra la discriminación.** La compañía de seguros no puede negarse a asegurarle; limitar la cobertura que compra; negar la renovación de su póliza; o cobrarle una tarifa diferente debido a su raza, color, creencia, país de origen o religión.

26. **Derecho a hacer preguntas.** Puede hacerle una pregunta a la compañía de seguros sobre su póliza. No pueden usar sus preguntas para denegar, no renovar o cancelar su cobertura. Sus preguntas tampoco se pueden utilizar para determinar su prima.

    Por ejemplo, puede hacer:

    - Preguntas generales sobre su póliza;

- Preguntas sobre el proceso de presentación de reclamaciones de la compañía; y
- Preguntas sobre si la póliza cubrirá una pérdida, a menos que la pregunta sea sobre un daño: (a) que ocurrió y (b) que resulta en una investigación o reclamación.

27. **Aviso de un "cambio material" a su póliza.** Si la compañía de seguros no quiere cancelar o no renovar su póliza, pero desea hacer ciertos cambios materiales o importantes, tendrá que explicar los cambios por escrito al menos **30 días** antes de la fecha anual de renovación. Los cambios materiales incluyen:

    - Ofrecerle menos cobertura;
    - Cambiar una condición de la cobertura; o
    - Cambiar lo que se requiere que usted haga.

    En lugar de un aviso de "cambio material", la compañía puede optar por no renovar su póliza existente. Si es así, la compañía tiene que enviar una carta de no renovación, pero todavía puede ofrecerle una póliza diferente.

    Nota: La compañía no puede reducir la cobertura durante el período de la póliza a menos que usted solicite el cambio. Si usted solicita el cambio, la compañía no tiene que enviarle un aviso.

28. **Explicación por escrito de la cancelación o la no renovación.** Puede pedirle a la compañía de seguros que le informen por escrito los motivos de su decisión de cancelar o de no renovar su póliza. La compañía tendrá que darle una explicación detallada de por qué cancelaron o no renovaron su póliza.

Figure 1: 28 TAC §5.9971(b)

CONSUMER BILL OF RIGHTS

Homeowners, Dwelling, and Renters Insurance

What is the Bill of Rights?

It is a basic outline of important rights you have under Texas law. Insurance companies must give you this Bill of Rights with your policy. It is important to read and understand your policy.

The Bill of Rights is not:

- A complete list of all your rights,
- Part of your policy, or
- A list of everything that you are responsible for.

Questions about these rights?

- If you are not sure about anything in your policy, ask your agent or insurance company.
- If you have questions or a complaint, contact the Texas Department of Insurance (TDI) at:

  Phone: 1-800-252-3439
  Email: ConsumerProtection@tdi.texas.gov
  Website: www.tdi.texas.gov/consumer
  Mail: Consumer Protection MC 111-1A
  P.O. Box 149091
  Austin, TX 78714-9101

- To learn more about insurance, visit www.opic.texas.gov or call the Office of Public Insurance Counsel (OPIC) at 1-877-611-6742.

AVISO: Este documento es un resumen de sus derechos como asegurado. Tiene derecho a llamar a su compañía de seguros y obtener una copia de estos derechos en español. Además, puede ser que su compañía de seguros tenga disponible una versión de su póliza en español.

Table of Contents

Where to Get Information

1. **Your insurance company.** When you get a copy of your policy you will also get an "Important Notice" from the company. The notice explains how to contact your company and how to file a complaint. You may request a complete copy of your policy from your company at any time.

2. **Your declarations page.** The declarations page, also called the "dec page," shows: (a) the name and address of your insurance company, (b) the location of the insured property, (c) the dates your policy is in effect, and (d) the amounts and types of coverage.

   Your company must list the exact dollar amount of each deductible in your policy. The declarations page, or a separate page, must also list any part of your policy that changes any deductible amount.

3. **The Texas Department of Insurance (TDI).** You have the right to call TDI for free at 1-800-252-3439 for information and help with a complaint against an insurer. You can also find information on the TDI website at www.tdi.texas.gov.

4. **Resources for shopping for insurance.** The Office of Public Insurance Counsel (OPIC) and TDI developed www.HelpInsure.com to help you compare rates and coverages for different insurance companies. OPIC also has an online tool to help you compare policies. You can find this policy comparison tool at www.opic.texas.gov.

What You Should Know When You File a Claim

5. **Deadlines for processing claims and payments.** You should file your claim with your insurance company as soon as possible. When you file a claim on your own policy, the insurance company must meet these deadlines:

   - **Within 15 days after you file a claim:** The company must let you know they received your claim. The company must also start their investigation and ask you for any other information they need.
   - **Within 15 business days after they get all the information they need:** The company must approve or deny your claim in writing. They can extend this deadline up to **45 days** from the date they: (a) let you know they need more time and (b) tell you why.
   - **Within 5 business days after they let you know your claim is approved**: The company must pay the claim.

   Note: TDI can extend these deadlines by 15 more days if there is a weather-related catastrophe.

   If your company fails to meet these deadlines, you may be able to collect the claim amount, interest, and attorney's fees.

6. **Written explanation of claim denial.** Your insurance company must tell you in writing why your claim or part of your claim was denied.

7. **Reasonable investigation.** Your insurance company cannot refuse to pay your claim without a reasonable investigation of the claim. You should keep records of all claim communications (including notes from phone calls) and other claim documentation (including damage estimates and receipts).

8. **Information not required for processing your claim.** Your insurance company can only ask for information reasonably needed for their claim investigation. However, they cannot ask for your federal income tax returns unless: (a) they get a court order or (b) your claim involves a fire loss, loss of profits, or lost income.

9. **Release of claim payments from lenders.** Often an insurance company will make a claim payment to you and your lender. If your lender gets the payment:

   - **No later than 10 days after receiving it they must:** (a) notify you and (b) tell you what you must do so the money can be released.
   - **No later than 10 days after you ask for the money, they must:** (a) send the money to you, or (b) tell you how to get the money released.

   If your lender does not: (a) provide the notices mentioned above or (b) pay the money after all the requirements have been met, the lender must pay you interest on the money.

10. **Notice of liability claim settlement.** Liability means you are responsible for other people's injuries or damage to their property. Your insurance company must let you know in writing:

    - About the first offer to settle a claim against you within **10 days** after the offer is made.
    - About any claim settled against you within **30 days** after the date of the settlement.

Who to Contact for Claim Disagreements

11. **Claim disagreements.** You can dispute the amount of your claim payment or what is covered under your policy. You can:

    - Contact your insurance company.
    - Contact an attorney to advise you of your rights under the law. The State Bar of Texas can help you find an attorney.
    - Pay a licensed public adjuster to review the damage and handle the claim.
    - File a complaint with TDI.

What You Should Know about Renewal, Cancellation and Nonrenewal

Renewal means that your insurance company is extending your policy for another term.

Cancellation means that, **before the end of the policy period**, the insurance company:

- Terminates the policy;
- Gives you less coverage or limits your coverage; or
- Refuses to give additional coverage that you are entitled to under the policy.

"**Refusal to renew**" and "**nonrenewal**" are terms that mean your coverage ends **at the end of the policy period**. The policy period is shown on the declarations page of your policy.

12. **Notice of premium increase.** If your insurance company plans to increase your premium by 10 percent or more on renewal, your company must send you notice of the rate increase at least **30 days** before your renewal date.

13. **Insurance company cancellation of homeowners policies.** If your homeowners policy has been in effect for **60 days or more**, your company can only cancel your policy if:

    - You don't pay your premium when it is due;
    - You file a fraudulent claim;
    - There is an increase in the risk covered by the policy that is: (a) within your control and (b) would make your premium go up; or
    - TDI decides that keeping the policy violates the law.

    If your policy has been in effect for **less than 60 days**, your company can only cancel your policy if:

    - One of the reasons listed above applies;
    - They reject a required inspection report within **10 days** after getting the report. The report must be done by a licensed or authorized inspector and cannot be more than 90 days old; or
    - They find something that creates an increase in risk that you did not include in your application and is not related to a prior claim.

14. **Insurance company cancellation of other residential property policies.** After your policy has been in effect for **90 days**, your company can only cancel your policy if:

    - You don't pay your premium when it is due;
    - You file a fraudulent claim;
    - There is an increase in the risk covered by the policy that is: (a) within your control and (b) would make your premium go up; or
    - TDI decides that keeping the policy violates the law.

15. **Notice of cancellation.** If your insurance company cancels your policy, they must let you know by mail at least **10 days** before the effective date of the cancellation. Check your policy because your company may give you more than 10 days' notice.

16. **Your right to cancel.** You can cancel your policy at any time and get a refund of the unused premium.

17. **Refund of premium.** If you or your insurance company cancel your policy before it ends, the company must refund any unused premium.

    - If the company cancels, they have **15 business days** from the day they cancel your policy.
    - If you ask to cancel your policy, the company has **15 business days** from the day you want the policy to end.

    You must let your company know you want the refund sent to you. If not, they may refund the remaining premium by giving you a premium credit on the same policy.

18. **Limits on using claims history for nonrenewal.** Your insurance company cannot refuse to renew your policy based on claims for damage from natural causes, including weather-related damage; or claims that are filed but not paid or payable under the policy.

    Appliance-related water damage claims. Your insurance company cannot refuse to renew your policy based on an appliance-related water damage claim if:

    - The damage has been properly repaired or remediated; and
    - The repair or remediation was inspected and certified.

However, your insurance company may refuse to renew your policy based on appliance-related water damage claims if:

- Three or more claims were filed and paid (including a claim filed by a prior owner on your property); or
- You: (a) file 2 claims within a three-year period; and (b) after the second claim, your company gives you written notice that filing a third appliance-related claim could result in your policy not being renewed; and
- You file a third claim.

Claims other than appliance-related water damage claims. Your insurance company cannot refuse to renew your policy based on other claims unless:

- You: (a) file 2 claims within a three-year period; and (b) after the second claim, your company gives you written notice that filing a third claim could result in your policy not being renewed; and
- You file a third claim.

19. **Limits on using claims history to increase premium.** Your insurance company cannot increase your premium based on claims for damage from natural causes, including weather-related damage; or claims that are filed but not paid or payable under your policy.

    Appliance-related water damage claims. Your company cannot increase your premium based on a prior appliance-related water damage claim if:

    - The damage has been properly repaired or remediated; and
    - The repair or remediation was inspected and certified.

    However, your insurance company may increase your premium based on prior appliance-related water damage claims if:

    - Three or more claims were filed and paid (including a claim filed by a prior owner on your property)

    Claims other than appliance-related water damage claims. Your insurance company cannot increase your premium based on other claims unless:

    - You file 2 or more claims within a three-year period.

20. **Right to ask questions.** You can ask your insurance company a question about your policy. They cannot use your questions to deny, nonrenew, or cancel your coverage. Your questions also cannot be used to determine your premium.

    For example, you may ask:

    - General questions about your policy;
    - Questions about the company's claims filing process; and
    - Questions about whether the policy will cover a loss, unless the question is about damage: (a) that occurred and (b) that results in an investigation or claim.

21. **Limit on using credit information to nonrenew your policy.** An insurance company cannot refuse to renew your policy solely because of your credit.

22. **Protections from discrimination.** An insurance company cannot refuse to insure you; limit the coverage

you buy; refuse to renew your policy; or charge you a different rate based on your race, color, creed, country of origin, or religion.

23. **Protection for low-value property.** An insurance company cannot refuse to renew your policy because the property value is low.

24. **Protection for older houses.** An insurance company cannot refuse to renew your policy based on the age of your property. However, they can refuse to renew your policy based on the condition of your property, including your plumbing, heating, air conditioning, wiring, or roof.

25. **Notice of nonrenewal.** Your insurance company must send you a notice that they are not renewing your policy. They must let you know at least **30 days** before your policy expires, or you can require them to renew your policy.

26. **Notice of a "material change" to your policy.** If your insurance company does not want to cancel or nonrenew your policy, but wants to make certain material changes, then they must explain the changes in writing at least **30 days** before the renewal date**.** Material changes include:

    - Giving you less coverage;
    - Changing a condition of coverage; or
    - Changing what you are required to do.

    Instead of a notice of "material change" a company may choose to not renew your existing policy. If so, the company has to send a nonrenewal letter, but may still offer you a different policy.

    Note: A company cannot reduce coverage during the policy period unless you ask for the change. If you ask for the change, the company does not have to send you a notice.

27. **Written explanation of cancellation or nonrenewal.** You can ask your insurance company to tell you in writing the reasons for their decision to cancel or not renew your policy. The company must explain in detail why they cancelled or nonrenewed your policy.

Figure 2: 28 TAC §5.9971(b)

DECLARACIÓN DE DERECHOS DEL CONSUMIDOR

Seguro de hogar, de propiedad residencial y para inquilinos

¿Qué es la Declaración de Derechos?

Es un resumen básico de los derechos importantes que tiene bajo la ley de Texas. Las compañías de seguros tienen que darle una copia de esta Declaración de Derechos junto con su póliza. Es importante leer y entender su póliza.

La Declaración de Derechos ***no es***:

- Una lista completa de todos sus derechos,
- Parte de su póliza, o
- Una lista de todas sus obligaciones.

¿Tiene preguntas sobre estos derechos?

- Si tiene una duda sobre algún aspecto de su póliza, consulte a su agente o a la compañía de seguros.
- Si tiene preguntas o alguna queja, comuníquese con el Departamento de Seguros de Texas (Texas Department of Insurance (TDI), por su nombre y siglas en inglés) al:

  Teléfono: 1-800-252-3439

  Correo electrónico: ConsumerProtection@tdi.texas.gov

  Sitio web: www.tdi.texas.gov/consumer

  Mail: Consumer Protection MC 111-1A
  P.O. Box 149091
  Austin, TX 78714-9101

- Para obtener más información sobre seguros, visite www.opic.texas.gov o llame a la Oficina del Asesor Público de Seguros (Office of Public Insurance Counsel (OPIC), por su nombre y siglas en inglés) al 1-877-611-6742.

AVISO: Si recibe algún documento en inglés, llame a su agente o compañía de seguros y pregunte si lo tienen disponible en español.

Tabla de Contenido

Dónde obtener información:

1. **La compañía de seguros.** Cuando reciba una copia de su póliza, también recibirá un "Aviso Importante" de la compañía. El aviso explica cómo ponerse en contacto con la compañía y cómo presentar una queja. Puede solicitar una copia completa de su póliza a la compañía en cualquier momento.

2. **La página de declaraciones.** La página de declaraciones, también llamada "página de dec.", muestra: (a) el nombre y la dirección de la compañía de seguros, (b) la localidad de la propiedad asegurada, (c) las fechas en que su póliza está vigente, y (d) las cantidades y tipos de cobertura.

   La compañía tendrá que indicar la cantidad exacta en dólares de cada deducible en su póliza. La página de declaraciones, o una página acompañada, también tendrá que incluir una lista de las secciones de su póliza que cambien la cantidad de cualquier deducible.

3. **El Departamento de Seguros de Texas (TDI).** Tiene derecho a llamar gratis a TDI al 1-800-252-3439 para obtener información y ayuda sobre una queja contra una aseguradora. También puede encontrar información en el sitio web de TDI en www.tdi.texas.gov.

4. **Recursos para ayudarlo a comprar seguro.** La Oficina del Asesor Público de Seguros (OPIC) y TDI establecieron el sitio web www.HelpInsure.com para ayudarlo a comparar tarifas y coberturas de diferentes compañías de seguros. OPIC también tiene una herramienta en línea para ayudarlo a comparar las pólizas. Puede encontrar esta herramienta de comparación de pólizas en www.opic.texas.gov.

Lo que debería saber al presentar una reclamación

5. **Plazos para tramitar reclamaciones y pagos.** Debe presentar su reclamación a la compañía de seguros lo más pronto posible. Cuando presente una reclamación bajo su propia póliza, la compañía de seguros tendrá que cumplir con los siguientes plazos:

   - **Dentro de los 15 días después de la presentación de una reclamación:** La compañía tendrá que informarle que recibió su reclamación. La compañía también tendrá que comenzar su investigación y pedirle cualquier otra información que necesita.
   - **Dentro de los 15 días hábiles después de recibir toda la información necesaria:** La compañía tendrá que aprobar o rechazar su reclamación por escrito. Pueden extender este plazo hasta 45 días a partir de la fecha en que: (a) le informan que necesitan más tiempo y (b) le indican la razón.
   - **Dentro de los 5 días hábiles después de que le informen que su reclamación ha sido aprobada:** La compañía tendrá que pagar la reclamación.

   Nota: TDI puede extender estos plazos por 15 días más si ocurre una catástrofe relacionada con el clima.

   Si la compañía no cumple con estos plazos, podría recibir la cantidad especificada en la reclamación, así como los intereses y los honorarios de los abogados.

6. **Explicación por escrito de la denegación de la reclamación.** La compañía de seguros tendrá que informarle por escrito por qué se rechazó su reclamación o alguna parte de su reclamación.

7. **Investigación razonable.** La compañía de seguros no puede negarse a pagar su reclamación debido a la edad de su propiedad. Debe mantener registros de todas las comunicaciones de reclamos (incluidas las notas de llamadas telefónicas) y otra documentación de reclamos (incluidos los estimados de daños y recibos).

8. **Información no requerida para procesar su reclamación.** La compañía de seguros puede solicitar únicamente información que sea razonablemente necesaria para hacer la investigación de su reclamación. Sin embargo, no pueden solicitar sus declaraciones de impuestos federales, a menos que: (a) obtengan una orden judicial o (b) su reclamación implique una pérdida por incendio, pérdida de ganancias o pérdida de ingresos.

9. **Liberación del pago de la reclamación por parte del prestamista.** Muchas veces, la compañía de seguros le enviará el pago de una reclamación a usted y a su prestamista. Si su prestamista recibe el pago:

    - **A más tardar 10 días después de recibirlo, el prestamista tiene que:** (a) notificarle y (b) informarle lo que tiene que hacer para que el dinero pueda ser liberado.
    - **A más tardar 10 días después de que solicite el dinero, el prestamista tiene que:** (a) enviárselo a usted, o (b) decirle qué tiene que hacer para lograr que se libere el dinero.

    Si su prestamista no: (a) le notifica lo mencionado anteriormente o (b) no le paga el dinero después de que se hayan cumplido todos los requisitos, el prestamista tendrá que pagarle intereses sobre el dinero.

10. **Aviso de que se llegó a un acuerdo sobre la reclamación de responsabilidad.** Responsabilidad significa que usted es responsable de las lesiones o daños a la propiedad de otras personas. La compañía de seguros tiene que informarle por escrito:

    - Acerca de la primera oferta para resolver una reclamación contra usted dentro de los **10 días** después de la fecha en que se hizo la oferta.
    - Acerca de cualquier reclamación decidida en su contra dentro de los **30 días** después de la fecha del acuerdo.

Con quién hablar si hay desacuerdos sobre las reclamaciones

11. **Desacuerdos sobre reclamaciones.** Puede disputar la cantidad que le pagan en su reclamación o lo que está cubierto en su póliza. Usted puede:

    - Comunicarse con la compañía de seguros.
    - Comunicarse con un abogado para que le aconseje sobre sus derechos bajo la ley. El Colegio de Abogados del Estado de Texas (The State Bar of Texas, por su nombre en inglés) puede ayudarlo a buscar un abogado.
    - Pagar a un ajustador público con licencia para que revise el daño y se haga cargo del reclamo.
    - Presentar una queja al Departamento de Seguros de Texas (TDI).

Lo que debería saber sobre la renovación, la cancelación y la no renovación

La **renovación** significa que la compañía de seguros extiende su póliza por un período adicional.

La **cancelación** significa que, **antes de llegar al final del período de la póliza**, la compañía de seguros:

- Se termina la póliza;
- Le ofrece menos cobertura o limita su cobertura; o
- Se niega a darle cobertura adicional que le corresponde bajo su póliza.

"Negar la renovación" y **"no renovación"** son términos que significan que su cobertura termina **al final del período de la póliza**. El período de la póliza aparece en la página de declaraciones de su póliza.

12. **Aviso del aumento de la prima**. Si su compañía de seguros tiene planes de aumentar su prima en un 10 por ciento o más al renovar, tendrá que informarle al menos **30 días** antes de la fecha de renovación.

13. **Cancelación por parte de la compañía de seguros de la póliza de hogar.** Si su póliza de hogar ha estado vigente por **60 días o más**, la compañía solo puede cancelar su póliza si:

    - No paga su prima en la fecha indicada;
    - Presenta una reclamación fraudulenta;
    - Hay un aumento en el riesgo cubierto por la póliza que: (a) está bajo su control y (b) aumentaría su prima; o
    - TDI decide que mantener la póliza viola la ley.

    Si su póliza ha estado vigente por **menos de 60 días**, su compañía solo puede cancelar su póliza si:

    - Una de las razones enumeradas anteriormente se aplica;
    - Le rechazan el informe obligatorio de la inspección dentro de los **10 días** después de la recepción del informe. El informe lo tiene que ser preparado por un inspector con licencia o un inspector autorizado y no puede haber pasado más de 90 días desde que se preparó; o
    - Descubren algo que aumenta los riesgos que usted no incluyó en su solicitud y que no tiene que ver con una reclamación anterior.

14. **Cancelación por la compañía de otras pólizas de propiedad residencial.** Una vez que su póliza haya estado vigente por **90 días**, la compañía solo puede cancelar su póliza si:

    - No paga su prima en la fecha indicada;
    - Presenta una reclamación fraudulenta;
    - Hay un aumento en el riesgo cubierto por la póliza que: está bajo su control y aumentaría su prima; o
    - TDI decide que mantener la póliza viola la ley.

15. **Aviso de cancelación.** Si la compañía de seguros cancela su póliza, tendrá que informarle por correo al menos 10 días antes de la fecha en que se haga efectiva la cancelación. Revise su póliza porque es posible que su compañía le ofrezca más de 10 días de notificación.

16. **Su derecho a cancelar.** Puede cancelar su póliza en cualquier momento y obtener un reembolso de la prima no utilizada.

17. **Reembolso de la prima.** Si usted o la compañía de seguros cancela su póliza antes de que finalice, la compañía tendrá que reembolsarle cualquier prima no utilizada.

    - Si la compañía cancela, tienen que reembolsarle la prima dentro de los **15 días hábiles** a partir del día en que cancelan su póliza.

- Si usted pide cancelar su póliza, tienen que reembolsarle la prima dentro de los **15 días hábiles** a partir del día en que usted desee que finalice la póliza.

Tiene que informarle a la compañía que desea que se le envíe el reembolso. De lo contrario, podrían reembolsarle la prima restante ofreciéndole un crédito de prima en la misma póliza.

18. **Limitaciones a usar su historial de reclamaciones para no renovar.** La compañía de seguros no puede negarse a renovar su póliza basándose en las reclamaciones de daños por causas naturales, incluidos daños relacionados con el clima; o reclamaciones que se presentan pero que no se le pagó o que no se le pudo pagar bajo su póliza.

Reclamaciones de daños de agua relacionados a electrodomésticos. La compañía de seguros no puede negarse a renovar su póliza basándose en una reclamación de daños de agua relacionado a electrodomésticos, si:

- El daño ha sido reparado o remediado adecuadamente; y
- La reparación o la remediación fue inspeccionada y certificada.

Sin embargo, la compañía de seguros puede negarse a renovar su póliza basándose en reclamaciones de daños de agua relacionados a electrodomésticos si:

- Ya se presentaron y pagaron tres o más reclamaciones (incluyendo reclamaciones a su propiedad presentadas por un propietario anterior); o
- Usted: (a) presenta 2 reclamaciones dentro de un período de tres años; y (b) después de la segunda reclamación, la compañía le notifica por escrito que presentar una tercera reclamación relacionada con un electrodoméstico podría resultar en que su póliza no se renueve; y
- Usted presenta una tercera reclamación.

Reclamaciones que no sean reclamaciones de daños de agua relacionadas a electrodomésticos. La compañía de seguros no puede negarse a renovar su póliza basándose en otras reclamaciones a menos que:

- Usted: (a) presente 2 reclamaciones dentro de un período de tres años; y (b) después de la segunda reclamación, la compañía le notifica por escrito que presentar una tercera reclamación podría resultar en que su póliza no se renueve; y
- Usted presenta una tercera reclamación.

19. **Limitaciones a usar su historial de reclamaciones para aumentarle la prima.** La compañía de seguros no puede aumentar su prima basándose en las reclamaciones de daños por causas naturales, incluidos daños relacionados con el clima; o reclamaciones que se presentan pero que no se le pagó o que no se le pudo pagar bajo su póliza.

Reclamaciones de daños de agua relacionados a electrodomésticos. La compañía de seguros no puede aumentar su prima basándose en una reclamación anterior de daños de agua relacionados a electrodomésticos si:

- El daño ha sido reparado o remediado adecuadamente; y
- La reparación o la remediación fue inspeccionada y certificada.

Sin embargo, la compañía de seguros puede aumentar su prima basándose en reclamaciones anteriores de daños de agua relacionados a electrodomésticos si:

- Ya se presentaron y pagaron tres o más reclamaciones (incluyendo reclamaciones a su propiedad presentadas por un propietario anterior).

Reclamaciones que no sean reclamaciones de daños de agua relacionados a electrodomésticos. La compañía de seguros no puede aumentar su prima basándose en otras reclamaciones a menos que:

- Usted presente 2 o más reclamaciones dentro de un período de tres años.

20. **Derecho a hacer preguntas.** Puede hacerle una pregunta a la compañía de seguros sobre su póliza. No pueden usar sus preguntas para denegar, no renovar o cancelar su cobertura. Sus preguntas tampoco se pueden utilizar para determinar su prima.

    Por ejemplo, puede hacer:

    - Preguntas generales sobre su póliza;
    - Preguntas sobre el proceso de presentación de reclamaciones de la compañía; y
    - Preguntas sobre si la póliza cubrirá una pérdida, a menos que la pregunta sea sobre un daño: (a) que ocurrió y (b) que resulta en una investigación o reclamación.

21. **Limitación a usar información crediticia para no renovar su póliza.** La compañía de seguros no puede negarse a renovar su póliza únicamente debido a la condición de su crédito.

22. **Protecciones contra la discriminación.** La compañía de seguros no puede negarse a asegurarle; limitar la cobertura que compra; negar la renovación de su póliza; o cobrarle una tarifa diferente debido a su raza, color, creencia, país de origen o religión.

23. **Protección para las propiedades de bajo valor.** La compañía de seguros no puede negarse a renovar su póliza porque el valor de la propiedad es bajo.

24. **Protección para casas más antiguas.** La compañía de seguros no puede negarse a renovar su póliza debido a la edad de su propiedad. Sin embargo, puede negarse a renovar su póliza debido a la condición de su propiedad, incluso, la condición de la plomería, calentador, aire acondicionado, alambrado o techo.

25. **Aviso de no renovación.** La compañía de seguros tendrá que enviarle un aviso de que no van a renovar su póliza. Tendrá que informarle al menos 30 días antes del vencimiento de su póliza, o usted les puede exigir que renueven su póliza.

26. **Aviso de un "cambio material" a su póliza.** Si la compañía de seguros no quiere cancelar o no renovar su póliza, pero desea hacer ciertos cambios materiales o importantes, tendrá que explicar los cambios por escrito al menos 30 días antes de la fecha de renovación. Los cambios materiales incluyen:

    - Ofrecerle menos cobertura;
    - Cambiar una condición de la cobertura; o
    - Cambiar lo que se requiere que usted haga.

    En lugar de un aviso de "cambio material", la compañía puede optar por no renovar su póliza existente. Si es así, la compañía tiene que enviar una carta de no renovación, pero todavía puede ofrecerle una póliza diferente.

    Nota: La compañía no puede reducir la cobertura durante el período de la póliza a menos que usted solicite el cambio. Si usted solicita el cambio, la compañía no tiene que enviarle un aviso.

27. **Explicación por escrito de la cancelación o la no renovación.** Puede pedirle a la compañía de seguros que le informen por escrito los motivos de su decisión de cancelar o de no renovar su póliza. La compañía tendrá que darle una explicación detallada de por qué cancelaron o no renovaron su póliza.

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.

Central Texas Workforce Development Board

Public Notice Request for Proposal for Management and Operation of Workforce Solutions of Central Texas Workforce Centers

The Central Texas Workforce Development Board, Inc., dba Workforce Solutions of Central Texas, is accepting proposals from qualified organizations for the management and operations of its Workforce Centers (aka One Stop Centers, aka American Job Centers). The local Workforce Centers provide business and job seeker services for the seven Texas counties of Bell, Coryell, Hamilton, Lampasas, Milam, Mills, and San Saba.

The Request for Proposals may be downloaded at www.workforcesolutionsctx.com under the shortcut: "About Us, Work with Us" link or at https://workforcesolutionsctx.com/procurement-vendors/. Prospective bidders may contact Horace Dicks by email at wbs@workforcesolutionsctx.com to request a proposal package or submit questions.

The Letter of Intent to Bid form included in the Proposal Application Packet must be received on or before 5:00 p.m. CDT on January 29, 2021. Questions must be submitted on or before 5:00 p.m. CDT on January 29, 2021. A mandatory Bidder's Conference will be held at 2:00 p.m. of February 3, 2021. Answers to any questions received will be distributed on February 5, 2021.

Proposals are due on or before 5:00 p.m. CDT February 26, 2021. Proposals will be submitted by email to wbs@workforcesolutionsctx.com. Late Proposals will not be accepted.

TRD-202100184
Linda Angel, Ph.D.
Deputy Executive Director
Central Texas Workforce Development Board
Filed: January 13, 2021

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Public Hearing on Proposed Statewide Procurement Division Rule Amendment Concerning Definitions

The Comptroller of Public Accounts will conduct a public hearing to receive comments from interested persons concerning proposed amendment to 34 Texas Administrative Code Section 20.25, Definitions. The proposed amendment was published in the *Texas Register* on January 8, 2021, (46 TexReg 289).

The hearing is scheduled for Thursday, January 28, 2021, at 10:00 a.m. There is no physical location for this meeting. To access the online public meeting by web browser, please enter the following URL into your browser:

https://txcpa.webex.com/txcpa/j.php?MTID=m75ff5c30bb07a24 8b14aee4af1a0edc3. To join the meeting by computer or cell phone using the Webex app, use the access code 146 822 3618. If prompted for a password enter 34TAC2025. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by January 27, 2021.

Any interested person may appear and offer comments or statements. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments through a representative member where possible.

Persons with disabilities who plan to participate in this meeting and who may need auxiliary aids or services should contact Mr. Gerard MacCrossan at Gerard.MacCrossan@cpa.texas.gov. Requests should be made as far in advance as possible so that appropriate arrangements can be made.

Persons who choose not to provide comments during this public hearing may still provide written comments to the comptroller. Written comments on the proposal may be submitted to Scott Stalnaker, Comptroller of Public Accounts, at P.O. Box 13528 Austin, Texas 78711 or Scott.Stalnaker@cpa.texas.gov. The deadline for submission of written comments is Monday, February 8, 2021.

This agency hereby certifies that this notice has been reviewed by legal counsel and found to be within the agency's authority to publish.

Issued in Austin, Texas, on January 12, 2021.

TRD-202100171
Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Filed: January 22, 2021

♦ ♦ ♦

Notice of Public Hearing on Proposed Statewide Procurement Division Rule Amendment Concerning General Purchasing Provisions

The Comptroller of Public Accounts will conduct a public hearing to receive comments from interested persons concerning proposed amendment to 34 Texas Administrative Code §20.81, General Purchasing Provisions. The proposed amendment was published in the January 8, 2021, issue of the *Texas Register* (46 TexReg 292).

The hearing is scheduled for Thursday, January 28, 2021, at 10:30 a.m. There is no physical location for this meeting. To access the online public meeting by web browser, please enter the following URL into your browser: https://txcpa.webex.com/txcpa/j.php?MTID=m4f69186fc19f425784f349fea14e99d0. To join the meeting by computer or cell phone using the Webex app, use the access code 146 976 2215. If prompted for a password enter 34TAC2081. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by January 27, 2021.

Any interested person may appear and offer comments or statements. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments through a representative member where possible.

Persons with disabilities who plan to participate in this meeting and who may need auxiliary aids or services should contact Mr. Gerard MacCrossan at Gerard.MacCrossan@cpa.texas.gov. Requests should be made as far in advance as possible so that appropriate arrangements can be made.

Persons who choose not to provide comments during this public hearing may still provide written comments to the comptroller. Written comments on the proposal may be submitted to Scott Stalnaker, Comptroller of Public Accounts, at P.O. Box 13528 Austin, Texas 78711 or Scott.Stalnaker@cpa.texas.gov. The deadline for submission of written comments is Monday, February 8, 2021.

This agency hereby certifies that this notice has been reviewed by legal counsel and found to be within the agency's authority to publish.

TRD-202100172
Don Neal
General Counsel, Operations and Support Legal Counsel
Comptroller Of Public Accounts
Filed: January 12, 2021

♦ ♦ ♦

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 01/18/21 - 01/24/21 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/18/21 - 01/24/21 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202100170
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 12, 2021

♦ ♦ ♦

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 **February 23, 2021.** 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 **February 23, 2021.** 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: AAA NURSERY/SAND & STONE, INCORPORATED; DOCKET NUMBER: 2020-1008-MSW-E; IDENTIFIER: RN111070223; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: mulch and landscape supply facility; RULES VIOLATED: 30 TAC §324.6 and 40 Code of Federal Regulations §279.22(c)(1), by failing to label or clearly mark containers used to store used oil with the words "Used Oil"; 30 TAC §328.5(b), by failing to submit a Notice of Intent prior to the commencement of recycling activities; 30 TAC §37.921(a) and §328.5(d), by failing to establish and maintain financial assurance for closure of the facility that stores combustible materials outdoors; 30 TAC §328.5(h), by failing to have a fire prevention and suppression plan and make it available to the local fire prevention authority; and 30 TAC §332.8(b)(1), by failing to maintain the setback distance of at least 50 feet from all property boundaries to the edge of the area receiving, processing, or storing feedstock or finished product; PENALTY: $27,638; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 756-3999; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Apache Stone Quarry, LLC; DOCKET NUMBER: 2020-0677-WQ-E; IDENTIFIER: RN104327697; LOCATION: Salado, Bell 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: $5,000; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Arnold Solis Rios dba A&A RV Park and Arnold Rios, Jr. dba A&A RV Park; DOCKET NUMBER: 2020-0965-PWS-E; IDENTIFIER: RN110974391; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's Well Number 1 and Well Number 2 into service; and 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; PENALTY: $4,039; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: CAPROCK DISTRIBUTORS, LLC; DOCKET NUMBER: 2020-0877-OSS-E; IDENTIFIER: RN102362076; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: wine production; RULES VIOLATED: 30 TAC §285.3(a) and (g)(2) and Texas Health and Safety Code, §366.004 and §366.051(a), by failing to obtain proper authorization prior to constructing, altering, repairing, extending, or operating an on-site sewage facility; PENALTY: $250; ENFORCEMENT COORDINATOR: Alejandro Laje, (512)

239-2547; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(5) COMPANY: Carolina Creek Christian Camps; DOCKET NUMBER: 2020-0788-MWD-E; IDENTIFIER: RN103196770; LOCATION: Riverside, Walker 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 WQ0014582001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 3, by failing to comply with permitted effluent limitations; PENALTY: $16,875; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2020-0796-AIR-E; IDENTIFIER: RN103919817; LOCATION: Baytown, Harris County; TYPE OF FACILITY: a chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 1504A, PSDTX748M1, and N148, Special Conditions Number 1, Federal Operating Permit Number O2113, General Terms and Conditions and Special Terms and Conditions Number 18, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: $142,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $57,000; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Fort Worth Transportation Authority; DOCKET NUMBER: 2020-0948-PST-E; IDENTIFIER: RN102029121; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: refueling fleet; RULES VIOLATED: 30 TAC §115.225 and Texas Health and Safety Code, §382.085(b), by failing to comply with annual Stage I vapor recovery testing requirements; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the regulated USTs; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.602(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 station; PENALTY: $10,439; ENFORCEMENT COORDINATOR: Terrany Binford, (512) 567-3302; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: GB Biosciences LLC; DOCKET NUMBER: 2020-1042-AIR-E; IDENTIFIER: RN100238492; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 4893A, Special Conditions Number 1, Federal Operating Permit Number O2266, General Terms and Conditions and Special Terms and Conditions Number 9, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $5,738; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Martin Garza Neira; DOCKET NUMBER: 2020-0928-MSW-E; IDENTIFIER: RN110845039; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: previously leased automotive shop; RULE VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: $1,187; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 756-3999; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(10) COMPANY: MILLER and MILLER REI FAMILY LIMITED PARTNERSHIP; DOCKET NUMBER: 2020-1071-PWS-E; IDENTIFIER: RN101251429; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to provide the results of nitrate sampling to the executive director for the January 1, 2018 - December 31, 2018, and the January 1, 2019 - December 31, 2019, monitoring periods; PENALTY: $314; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: NB & MM Company Inc dba Cowboys Stop; DOCKET NUMBER: 2020-1026-PST-E; IDENTIFIER: RN101382687; LOCATION: Longview, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(2) and (c)(2)(C) and TWC, §26.3475(d), by failing to ensure the underground storage tank corrosion protection system is operated and maintained in a manner that will provide continuous corrosion protection, and failing to inspect the impressed cathodic protection system at least once every 60 days to ensure the rectifier and other system components are operating properly; PENALTY: $3,101; ENFORCEMENT COORDINATOR: Courtney Atkins, (512) 534-6862; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: RACETRAC PETROLEUM, INCORPORATED dba Racetrac 2445; DOCKET NUMBER: 2020-0952-PST-E; IDENTIFIER: RN109618827; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days; PENALTY: $18,401; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Randolph D & L Company, LLC; DOCKET NUMBER: 2020-1067-AIR-E; IDENTIFIER: RN110901626; LOCATION: Commerce, Hunt County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $3,850; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Silgan Containers Manufacturing Corporation; DOCKET NUMBER: 2020-1015-AIR-E; IDENTIFIER: RN100225374; LOCATION: Paris, Lamar County; TYPE OF FACILITY: a can manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(E)(i) and (c) and §122.143(4), New Source Review Permit Number 21720, Special Conditions Numbers 11.D and 11.G, Federal Operating Permit (FOP) Number O1781, , General Terms and Conditions (GTC) and Special Terms and Conditions Numbers 2.A(iv)(3) and 3, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain records containing the information

and data sufficient to demonstrate compliance with the permit; and 30 TAC §122.143(4) and §122.145(2)(B) and (C), FOP Number O1781 GTC, and THSC, §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance, and failing to submit a deviation report no later than 30 days after the end of each reporting period; PENALTY: $6,670; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: SRC Water Supply Inc dba Rolling Hills Water Supply and Sandra R. Barbey dba Rolling Hills Water Supply; DOCKET NUMBER: 2020-0968-PWS-E; IDENTIFIER: RN101225753; LOCATION: Valley Mills, McLennan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(d) and §290.46(r), by failing to operate the system to maintain a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and a minimum pressure of 20 psi during emergencies such as firefighting; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 91550139 for Fiscal Years 2018 through 2020; PENALTY: $1,141; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-202100134
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: January 12, 2021

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Amended Notice of Public Meeting for an Air Quality Permit (to add information on how to participate in the meeting in Spanish/para agregar información sobre como participar en la reunión en español): Air Quality Permit Number 160902

APPLICATION. Solugen Chemicals LLC, 14549 Minetta St, Houston, Texas 77035-6523, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 160902, which would authorize modification to the Solugen Minetta Facility located at 14549 Minetta St, Houston, Harris County, Texas 77035. This application was submitted to the TCEQ on April 7, 2020. The existing facility will emit the following contaminants: organic compounds.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations.

PUBLIC COMMENT/PUBLIC MEETING.

You may submit public comments about this application at the address below. The TCEQ will hold a public meeting on this application because it was requested by local legislators. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting is not a contested case hearing. The TCEQ will consider all public comments in developing a final decision on the application. The public meeting will consist of two parts, an Informal Discussion Period and a Formal Comment Period. During the Informal Discussion Period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application. However, informal comments made during the Informal Discussion Period will not be considered by the TCEQ Commissioners before reaching a decision on the permit and no formal response will be made to the informal comments. During the Formal Comment Period, members of the public may state their formal comments into the official record. A written response to all formal comments will be prepared by the Executive Director and considered by the Commissioners before they reach a decision on the permit. A copy of the response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this application and who provides a mailing address.

The Public Meeting is to be held:

Thursday, January 21, 2021 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 150-875-499. 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) 929-4232 and enter access code 977-524-305.

Las personas que deseen escuchar o participar en la reunión en español pueden llamar al (844) 368-7161 e ingresar el código de acceso 904535#. Para obtener más información o asistencia, comuníquese con Jaime Fernández al (512) 239-2566.

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 permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the following locations: TCEQ central office, the TCEQ Houston regional office, at the Pasadena Public Library: Central, 1201 Jeff Ginn Memorial Dr, Pasadena, Texas 77506, and electronically at *https://algcorp.com/news1.php.* The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk St Ste H, Houston, Texas. Further information may also be obtained from Solugen Chemicals LLC at the address stated above or by calling Mr. Joel LeBlanc, Houston General Manager at (281) 806-5830.

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: January 06, 2021

TRD-202100104

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 7, 2021

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Enforcement Orders

An agreed order was adopted regarding the City of Sanger, Docket No. 2018-0273-MWD-E on January 13, 2021, assessing $64,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Noor Ali dba Brazos Bend Home & Ranch and TANK WORKS INC. dba Brazos Bend Home & Ranch, Docket No. 2018-0856-PWS-E on January 13, 2021, assessing $241 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SK Alliance Inc dba On The Road 103, Docket No. 2018-0991-PST-E on January 13, 2021, assessing $9,424 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Santa Rosa, Docket No. 2018-0993-WQ-E on January 13, 2021, assessing $21,250 in administrative penalties with $21,250 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EE-TDF Cleveland LLC, Docket No. 2018-1433-MSW-E on January 13, 2021, assessing $123,750 in administrative penalties with $96,632 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Calhoun's Country Store, Incorporated dba Crossroads 13, Docket No. 2019-0141-PST-E on January 13, 2021, assessing $26,132 in administrative penalties with $5,226 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Midcoast G & P (North Texas) L.P. f/k/a Enbridge G & P (North Texas) L.P., Docket No. 2019-0276-AIR-E on January 13, 2021, assessing $11,475 in administrative penalties with $2,295 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Crosbyton, Docket No. 2019-0339-MWD-E on January 13, 2021, assessing $15,000 in administrative penalties with $3,000 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Universal Pressure Pumping, Inc., Docket No. 2019-0386-IHW-E on January 13, 2021, assessing $34,221 in administrative penalties with $6,844 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Aransas Pass, Docket No. 2019-0453-MWD-E on January 13, 2021, assessing $95,512 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Sludge Disposal Inc, Docket No. 2019-0611-IHW-E on January 13, 2021, assessing $37,362 in administrative penalties with $7,472 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NNP TRADING, INC. dba Easy Food Mart, Docket No. 2019-0899-PST-E on January 13, 2021, assessing $33,675 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding JC & G Company, LLC dba Grace's one stop, Docket No. 2019-1018-PST-E on January 13, 2021, assessing $36,300 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Christopher Mullins, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ALFE PROPERTIES LLC, Docket No. 2019-1201-AIR-E on January 13, 2021, assessing $16,543 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Mark Alvarez, L.L.C., Docket No. 2019-1234-AIR-E on January 13, 2021, assessing $2,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TPC Group LLC, Docket No. 2019-1365-AIR-E on January 13, 2021, assessing $127,500 in administrative penalties with $25,500 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SWWC Utilities, Inc., Docket No. 2019-1625-MWD-E on January 13, 2021, assessing $51,498 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Hooks, Docket No. 2019-1738-PWS-E on January 13, 2021, assessing $1,725 in adminis-

trative penalties. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding REGAL OIL INC. dba Star Stop Food Mart 17, Docket No. 2020-0087-PST-E on January 13, 2021, assessing $11,275 in administrative penalties with $2,255 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ExxonMobil Oil Corporation, Docket No. 2020-0268-AIR-E on January 13, 2021, assessing $13,125 in administrative penalties with $2,625 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Ackerly, Docket No. 2020-0279-PWS-E on January 13, 2021, assessing $2,070 in administrative penalties with $1,950 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Undine Texas, LLC, Docket No. 2020-0516-PWS-E on January 13, 2021, assessing $1,725 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Phillips 66 Company, Docket No. 2020-0730-AIR-E on January 13, 2021, assessing $19,688 in administrative penalties with $3,937 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Enterprise Products Operating LLC, Docket No. 2020-0752-AIR-E on January 13, 2021, assessing $12,075 in administrative penalties with $2,415 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Walter J. Carroll Water Company, Inc., Docket No. 2020-0803-PWS-E on January 13, 2021, assessing $1,200 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the Town of Quintana, Docket No. 2020-0986-PWS-E on January 13, 2021, assessing $1,150 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202100187

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 13, 2021

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Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 163535

APPLICATION. Mesquite Concrete, Inc., 7566 Farm-to-Market 541 East, Falls City, Texas 78113-2447 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 163535 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at Township Road 4 County Road 517, Skidmore, Bee County, Texas 78389. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=28.237856&lng=-97.688183&zoom=13&type=r. This application was submitted to the TCEQ on December 14, 2020. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on December 28, 2020.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Monday, February 22, 2021, at 6:00 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 173-036-715. 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 672-441-157. 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.

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Corpus Christi Regional Office, located at NRC Building Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Mesquite Concrete, Inc., 7566 Farm-to-Market 541 East, Falls City, Texas 78113-2447, or by calling Mr. Kevin Janek, President at (830) 216-1530.

Notice Issuance Date: January 6, 2021

TRD-202100128
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 8, 2021

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Notice of Correction to Agreed Order Number 13

In the June 19, 2020, issue of the *Texas Register* (45 TexReg 4224), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 13, for Lilbert-Looneyville Water Supply Corporation, Docket Number 2020-0122-PWS-E. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "$441."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202100135
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: January 12, 2021

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Notice of District Petition

Notice issued January 8, 2021

TCEQ Internal Control No. D-08072020-012; Maple Heights Development, LLC, (Petitioner) filed a petition for creation of Montgomery County Municipal Utility District No. 110 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder on the property to be included in the proposed District and the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 211.269 acres located within Montgomery County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Conroe, Texas. By Ordinance No. 2513-20, passed and adopted on June 11, 2020, the City of Conroe, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, parks and recreation facilities, systems, plants, and enterprises as shall be consistent with all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $52,645,000 ($29,805,000 for water, wastewater, and drainage plus $6,950,000 for recreation plus $15,890,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website 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 website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. 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) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests 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 Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202100127
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 8, 2021

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of The Dynamite Inc DBA Country Food Mart: SOAH Docket No. 582-21-0938; TCEQ Docket No. 2018-1654-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - February 11, 2021

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701.

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 12, 2019 concerning assessing administrative penalties against and requiring certain actions of THE DYNAMITE INC dba Country Food Mart, for violations in Montgomery County, Texas, of: Tex. Water Code §§26.3475(c)(1) and 26.3475(d), Tex. Health & Safety Code §382.085(b), and 30 Texas Administrative Code §§115.241(c)(2), 334.49(a)(2), and 334.50(b)(1)(A).

The hearing will allow THE DYNAMITE INC dba Country Food Mart, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford THE DYNAMITE INC dba Country Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of THE DYNAMITE INC dba Country Food Mart to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** THE DYNAMITE INC dba Country Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code chs. 7 and 26, Tex. Health & Safety Code ch. 382, and 30 Texas Administrative Code chs. 70, 115, and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Benjamin Warms, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Admininistrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: January 12, 2021

TRD-202100179
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 12, 2021

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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 December 18, 2020 to January 8, 2021. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, January 15, 2021. The public comment period for this project will close at 5:00 p.m. on Sunday, February 14, 2021.

FEDERAL AGENCY ACTIONS:

Applicant: Grand Parkway Infrastructure, LLC

Location: The project site is located northeast of Houston, within Chambers, Harris, Liberty, and Montgomery Counties, Texas.

Latitude & Longitude (NAD 83): 29.854911, -94.869411

Project Description: The applicant is proposing to modify the currently authorized Department of the Army (DA) Permit SWG-2012-00153. The modifications will include:

1) Church House Gully (Stream 5): The design for this crossing has been modified from being straightened to facilitate drainage to adding a culvert crossing at Station 1355+00. Box culverts will be added under the Westbound Frontage Road (WBFR), Mainlanes (ML), and Eastbound Frontage Road (EBFR). Stream 5 will be straightened 427 linear feet where the culverts are proposed. In addition, a new driveway has been proposed along the WBFR at Station 1354+00 to maintain access for this landowner.

2) Hackberry Gully (FM 565 Drainage Improvements - Ditch 1): Ditch 1 is palustrine emergent wetland (PEM). This design modification consists of widening and enlarging the existing drainage ditch along FM 565 at the northeast corner of FM 565 and SH 99. The drainage ditch would outfall into Ditch 1 (Hackberry Gully). In addition, the existing access off FM 565 will be improved in order to maintain access to the adjacent property. The improvement will include an extension of the existing driveway over the future drainage channel.

3) Future Langston Boulevard Drainage Easement (Wetland 1, Wetland 2, and Wetland 5): A drainage analysis was completed for the project and it was determined that additional drainage would be required for the project. The future Langston Boulevard drainage easement consists of a 0.7-acre drainage easement. The drainage easement would be aligned parallel to the City of Mont Belvieu's proposed Langston Boulevard. The drainage easement would outfall into Wetland 5 (Hackberry Gully).

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2012-00153. 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. 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: 21-1138-F1

Applicant: Port of Corpus Christi Authority

Location: The project site is located in Corpus Christi Bay at Indian Point, Portland,

Nueces and San Patricio Counties, Texas.

Latitude & Longitude (NAD 83): 27.85109, -97.35711

Project Description: The applicant proposes the placement of a maximum of 5,000 cubic yards (cy) of sand along approximately 3 acres of the Indian Point shoreline to stabilize the soil, help absorb low-energy waves, and increase intertidal habitat conditions by establishing a stable slope for the shoreline. The sand fill would be placed along the shoreline below the High Tide Line (HTL) within the unvegetated bay bottom. Fill would not be placed within any existing seagrass areas. Nearshore segmented breakwaters placed in approximately 2 acres of bay bottom would further absorb wave energy offshore and create a low-energy environment in the lee area; they may be constructed of approx. 10,000 cy of material or units composed of concrete, rock, steel, mesh, geotextile, geogrid, bedding stone, piles, chains, anchors, floating platforms, oyster shell, or similar placed within unvegetated bay bottom below the HTL. Oyster reefs would be constructed to provide new marine habitat; they would be composed of approximately 2,000 cy of shell hash, shell bags, live oysters, or similarly placed material within unvegetated bay bottom below the HTL in an approximate 1.5-acre area.

The offshore breakwaters would be constructed using heavy construction equipment such as barge-mounted excavators, marsh excavators, or similar. The rock would be selectively placed to meet the designed breakwater parameters, elevations, and slopes. The beach fill would likely be constructed using land-based earthwork equipment such as loaders, mini excavators, and similar. The oyster reefs may be installed by hand and/or with heavy equipment such as an excavator. Construction material may be stockpiled on land away from any sensitive habitats and/or on barges anchored within the work area limits. Silt curtains or approved equal Best Management Practices (BMPs) would be placed adjacent to existing seagrasses. The water depths are shallow where the silt curtains would be placed, but stakes may be used to secure the curtain if needed. Stakes would be either installed by hand or pushed into the bottom using an excavator. Operations requiring sound mitigation such as impact driving are not proposed as part of this project. As the breakwaters are constructed, wave energy in the lee area (i.e., where the silt curtains would be located) would reduce. It is anticipated that the silt curtains would be stable, and the contractor would be required to monitor and maintain the curtains throughout construction to ensure their placement remains stable, and they function as needed.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2020-00839. 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. 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: 21-1161-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-202100186
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: January 13, 2021

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Texas Health and Human Services Commission

Public Notice - Proposed Amendment to the Home and Community-based Services Waiver Application

Due to the public health emergency resulting from COVID-19, the Health and Human Services Commission (HHSC) submitted a request to the Centers for Medicare & Medicaid Services (CMS) to amend the waiver application for the Home and Community-based Services (HCS) waiver program through an Appendix K. HHSC administers the HCS waiver program under the authority of §1915(c) of the Social Security Act. CMS has approved the HCS waiver application through August 31, 2023. HHSC has requested approval to implement the requested amendment until October 23, 2020. The proposed effective date for the amendment is March 13, 2020.

This request is for HHSC to make retainer payments to HCS program providers for residential support and supervised living when an individual, whose residence is a program provider's three-person residence

or four-person residence, is not receiving residential support or supervised living because the individual is living away from the residence during the COVID-19 public health emergency. Providers will be allowed to bill up to 90 days from March 20, 2020 to October 23, 2020 for individuals receiving residential support or supervised living.

CMS has determined that public notice requirements normally applicable under 1915(c) do not apply to information contained in an Appendix K. Therefore, states applying for COVID-19 §1915(c) Appendix K amendments are not required to conduct a public notice and input process.

An individual may obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments regarding this amendment by contacting Luis Solorio by telephone or email.

Telephone

(512) 487-3449

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-202100118
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: January 8, 2021

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Texas Department of Insurance

Company Licensing

Application for Southern County Mutual Insurance Company, a domestic fire and/or casualty company, to change its name to GEICO Texas County Mutual Insurance Company. The home office is in Richardson, 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-202100188
James Person
General Counsel
Texas Department of Insurance
Filed: January 13, 2021

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Notice of Hearing

CONSUMER CHOICE BENEFIT PLANS - REQUIRED NOTICES AND ADDITIONAL REQUIREMENTS DOCKET NO. 2827

The Department of Insurance (TDI) will hold a public hearing to consider proposed amendments to 28 TAC §§21.3530, 21.3535, 21.3542, 21.3543, and 21.3544, concerning required notices for consumer choice health benefit plans, and the proposed repeal of 28 TAC §§21.3525 - 21.3528, concerning additional requirements, published in the *Texas Register* on December 4, 2020, at 45 TexReg 8729.

The hearing will begin at 2:30 p.m., central time, on February 9, 2021. To avoid the risk of transmission of COVID-19, TDI will hold the public hearing remotely using online resources. TDI's website has instructions on how to register for and participate in the hearing. This information is available at *https://www.tdi.texas.gov//alert/event/2021/02/docket-2827.html.*

If you plan to speak, you should register on or before noon, central time, on February 4, 2021. Please make certain you register for Docket No. 2827. You will be called by name when it is your turn to speak.

The period to submit written comments on this rule proposal closed at 5:00 p.m., central time, on Monday, January 4, 2021, and all written comments received during the comment period will be taken into consideration in preparation of the adoption order. TDI will also consider oral comments made during this public hearing.

TRD-202100117
Allison Eberhart
Assistant General Counsel
Texas Department of Insurance
Filed: January 8, 2021

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Notice of Public Hearing

Texas Workers' Compensation

Revised Classification Relativities

TRADE PRACTICES - SUBMISSION OF CLEAN CLAIMS

DOCKET NO. 2826

The Department of Insurance (TDI) will hold a public hearing to consider proposed amendments to 28 TAC §21.2821, concerning reporting requirements, and the proposed repeal of §21.2824, concerning applicability. This proposal was published in the *Texas Register* on November 27, 2020, at 45 TexReg 8483.

To avoid the risk of transmission of COVID-19, the hearing will take place remotely. It will begin at 2:30 p.m., central time, on February 2, 2021. TDI's website has instructions on how to register for and participate in the hearing. This information is available at www.tdi.texas.gov//alert/event/2021/02/docket-2826.html.

If you plan to speak, you should register on or before noon, central time, on January 28, 2021. Please make certain you register for Docket No. 2826. You will be called by name when it is your turn to speak.

The period to submit written comments on this rule proposal closed at 5:00 p.m., central time, on Monday, December 28, 2020, and all written comments received during the comment period will be taken into consideration in preparation of the adoption order. TDI will also consider oral comments made during this public hearing.

TRD-202100130
James Person
General Counsel
Texas Department of Insurance
Filed: January 11, 2021

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Texas Lottery Commission

Scratch Ticket Game Number 2290 "WINNER WINNER CHICKEN DINNER"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2290 is "WINNER WINNER CHICKEN DINNER". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2290 shall be $1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2290.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, EGG SYMBOL, $1.00, $2.00, $3.00, $5.00, $10.00, $25.00, $100 and $500.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2290 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
EGG SYMBOL	DBL
$1.00	ONE$
$2.00	TWO$
$3.00	THR$

$5.00	FIV$
$10.00	TEN$
$25.00	TWFV$
$100	ONHN
$500	FVHN

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2290), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2290-0000001-001.

H. Pack - A Pack of the "WINNER WINNER CHICKEN DINNER" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "WINNER WINNER CHICKEN DINNER" Scratch Ticket Game No. 2290.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "WINNER WINNER CHICKEN DINNER" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose thirteen (13) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to the WINNING NUMBER Play Symbol, the player wins the prize for that number. If the player reveals an "EGG" Play Symbol, the player wins DOUBLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly thirteen (13) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly thirteen (13) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the thirteen (13) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the thirteen (13) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to

the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 01 and $1.00).

D. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

E. KEY NUMBER MATCH: A Ticket may have up to two (2) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

F. KEY NUMBER MATCH: The "EGG" (DBL) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

G. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "WINNER WINNER CHICKEN DINNER" Scratch Ticket Game prize of $1.00, $2.00, $3.00, $5.00, $10.00, $25.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "WINNER WINNER CHICKEN DINNER" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "WINNER WINNER CHICKEN DINNER" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "WINNER WINNER CHICKEN DINNER" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 11,040,000 Scratch Tickets in Scratch Ticket Game No. 2290. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2290 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	993,600	11.11
$2.00	515,200	21.43
$3.00	294,400	37.50
$5.00	147,200	75.00
$10.00	257,600	42.86
$25.00	7,360	1,500.00
$100	2,116	5,217.39
$500	30	368,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.98. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2290 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2290, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202100169
Bob Biard
General Counsel
Texas Lottery Commission
Filed: January 12, 2021

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North Central Texas Council of Governments

Request for Proposals - Fort Worth to Dallas Trail Branding and Wayfinding Project

The North Central Texas Council of Governments (NCTCOG) is requesting proposals for branding and marketing of the world-class trail that will connect five cities from downtown Fort Worth to downtown Dallas as a regional, state, and national tourism destination. This regional collaboration will result in a unified name and brand/logo for the trail; the development of a Branding and Wayfinding Signage Best Practices and Guidelines Manual, recommendations for real-time display message boards and counters; recommendations for necessary support infrastructure for eco-tourism as well as major regional and national events such as marathons; and the integration of a regional 911 signage system along the trail. In addition, the project will build regional consensus for ongoing marketing, maintenance, and operations of the trail corridor, including the potential for an existing or new non-profit or for-profit partner(s) to oversee these efforts.

Proposals must be received no later than 5:00 p.m., Central Daylight Time, on Friday February 19, 2021, to Shawn Conrad, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to TransRFPs@nctcog.org. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on Friday, January 22, 2021.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202100185
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: January 13, 2021

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Texas Parks and Wildlife Department

Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

The City of Austin has applied to the Texas Parks and Wildlife Department (TPWD) for an Individual Permit pursuant to Texas Parks and Wildlife Code, Chapter 86, to remove or disturb up to 10,000 cubic yards of sedimentary material within Barton Creek and Barton Springs Pool in Travis County. The purpose is to remove sand and gravel due to flood debris left by multiple flooding events at both Barton Springs Pool and Barton Creek. The location is approximately four miles downstream of Loop 360 and one-half mile upstream from Barton Springs Road in Austin, Texas. Notice is being published and mailed pursuant to Title 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 11:00 a.m. on February 12, 2021. Due to COVID-19 transmission concerns with travelling and person-to-person gatherings, remote participation is required for the public comment hearing. Potential attendees should contact Tom Heger at (512) 389-4583 or at tom.heger@tpwd.texas.gov for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register* or a newspaper, whichever is later. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, TX 78744; fax (512) 389-4405; or e-mail tom.heger@tpwd.texas.gov.

TRD-202100182
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: January 12, 2021

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Public Utility Commission of Texas

Notice of Application for Approval of the Provision of Non-Emergency 311 Service

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) for approval to provide non-emergency 311 services.

Docket Style and Number: Application of Southwestern Bell Telephone Company dba AT&T Texas for Administrative Approval to Provide Non-Emergency 311 Service for the City of Edinburg, Docket Number 51694.

The Application: On January 7, 2021, Southwestern Bell Telephone Company dba AT&T Texas filed an application with the commission under 16 Texas Administrative Code §26.127, for approval to provide non-emergency 311 service for the City of Edinburg.

Non-emergency 311 service is available to local governmental entities to provide to their residents an easy-to-remember number to call for access to non-emergency services. By implementing 311 service, communities can improve 911 response times for those callers with true emergencies. Each local government entity that elects to implement 311 service will determine the types of non-emergency calls their 311-call center will handle.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is February 22, 2021. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51694.

TRD-202100126
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 8, 2021

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 6, 2021, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of North Texas Fiber, Inc. for Designation as an Eligible Telecommunications Carrier, Docket Number 51686.

The Application: North Texas Fiber, Inc. seeks designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418.

North Texas Fiber seeks an ETC designation for the purpose of being eligible to receive federal universal service support from the Federal Communications Commission's Rural Digital Opportunity Fund.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than February 23, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51686.

TRD-202100114
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 8, 2021

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 6, 2021, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of MSEC Communications, LLC dba MidSouth Fiber Internet for Designation as an Eligible Telecommunications Carrier, Docket Number 51687.

The Application: Monster Broadband, Inc. seeks designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

MidSouth Fiber seeks an ETC designation for the purpose of being eligible to receive federal universal service fund support through the Rural Digital Opportunity Fund.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than February 23, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51687.

TRD-202100115
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 8, 2021

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 6, 2021, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Monster Broadband, Inc. for Designation as an Eligible Telecommunications Carrier, Docket Number 51692.

The Application: Monster Broadband, Inc. seeks designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Monster Broadband, Inc. seeks an ETC designation for the purpose of being eligible to receive federal universal service fund support via Lifeline and through the Rural Digital Opportunity Fund.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than February 23, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51692.

TRD-202100116
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 8, 2021

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 5, 2021, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Charter Fiberlink TX-CCO, LLC and Time Warner Cable Information Services (Texas), LLC for Designation as an Eligible Telecommunications Carriers, Docket Number 51682.

The Application: Charter Fiberlink TX-CCO, LLC and Time Warner Cable Information Services (Texas), LLC seek designation as eligible telecommunications carriers (ETC) under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Charter Fiberlink and Time Warner seek ETC designations for the purpose of being eligible to receive federal universal service support from the Federal Communications Commission's Rural Digital Opportunity Fund.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than January 7, 2019, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51682.

TRD-202100120
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 8, 2021

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 5, 2021, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Resound Networks, LLC. for Designation as an Eligible Telecommunications Carrier, Docket Number 51679.

The Application: Resound Networks, LLC seeks designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418.

Resound Networks seeks an ETC designation for the purpose of being eligible to receive federal universal service support from the Federal Communications Commission's Rural Digital Opportunity Fund.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than January 7, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51679.

TRD-202100121
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: January 8, 2021

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 6, 2021, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Cebridge Telecom TX, L.P. dba Suddenlink Communications for Designation as an Eligible Telecommunications Carrier, Docket Number 51691.

The Application: Cebridge Telecom TX, L.P. dba Suddenlink Communications seeks designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Suddenlink Communications seeks an ETC designation for the purpose of being eligible to receive federal universal service support from the Federal Communications Commission's Rural Digital Opportunity Fund.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than February 23, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51691.

TRD-202100123
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: January 8, 2021

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 6, 2021, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Plains Internet, LLC for Designation as an Eligible Telecommunications Carrier, Docket Number 51685.

The Application: Plains Internet, LLC seeks designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Plains Internet requests that its ETC designation as a telecommunications carrier eligible to receive federal Universal Service Fund (USF), including support through the Federal Communications Commission's (FCC) high-cost USF program, in order to receive funds under the FCC's Rural Digital Opportunity Fund for certain census blocks in the state of Texas. Plains' application includes a list of the census blocks attached as Exhibit B.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than February 23, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51685.

TRD-202100125
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 8, 2021

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 6, 2021, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of LTD Broadband LLC for Designation as an Eligible Telecommunications Carrier, Docket Number 51693.

The Application: LTD Broadband LLC seeks designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

LTD Broadband LLC seeks an ETC designation for the purpose of being eligible to receive federal universal service fund support via Lifeline and through the Rural Digital Opportunity Fund.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than February 24, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51693.

TRD-202100180

Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: January 8, 2021

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 8, 2021, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Peoples Communication, LLC dba Peoples (Peoples) for Designation as an Eligible Telecommunications Carrier, Docket Number 51697.

The Application: Peoples seeks designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Peoples seeks an ETC designation for the purpose of qualifying to receive federal support in three census blocks within certain non-rural wire centers to provide federally supported voice telephony and broadband services through the Rural Digital Opportunity Fund.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than February 25, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51697.

TRD-202100181
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 8, 2021

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Notice of Application to Amend Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 6, 2021, to amend a designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of AMG Technology Group, LLC dba Nextlink Internet to Amend its Designation as an Eligible Telecommunications Carrier, Docket Number 51681.

The Application: AMG Technology Group, LLC dba Nextlink Internet seeks to amend its designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418.

Nextlink Internet requests that its ETC designation be expanded to cover a service area that includes an additional 5,590 census blocks in Texas where it has been awarded Rural Digital Opportunity Fund support.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than February 23, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51681.

TRD-202100107
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 7, 2021

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Notice of Application to Amend Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 6, 2021, to amend a designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Frontier Southwest Incorporated dba Frontier Communications of Texas to Amend its Designation as an Eligible Telecommunications Carrier, Docket Number 51684.

The Application: Frontier Southwest Incorporated dba Frontier Communications of Texas seeks to amend its designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418.

Frontier Southwest Incorporated dba Frontier Communications of Texas requests that its ETC designation be expanded to cover a service area that includes an additional 6 census areas in Texas where it has been awarded Rural Digital Opportunity Fund support.

Persons who wish to file a motion to intervene or comments on the application should contact the commission no later than February 23, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51684.

TRD-202100122
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: January 8, 2021

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Notice of Petition to Relinquish Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 22, 2020, to relinquish its designation as an eligible telecommunications carrier.

Docket Title: Petition of T-Mobile West LLC to Relinquish its Eligible Telecommunications Carrier Designation, Docket Number 51649.

The Application: T-Mobile West LLC notified the commission that it seeks to relinquish its eligible telecommunications carrier designation in service areas in which customers will have competitive provider or carrier options. T-Mobile will continue to provide wireless service in Texas as a non-ETC. T-Mobile indicated there are a number of other ETC's that provide Lifeline service throughout T-Mobile's ETC service area, including incumbent local exchange carriers. T-Mobile stated it will provide written notice to T-Mobile Lifeline customers that it no longer participates in the Lifeline program in advance of its relinquishment.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 as a deadline to intervene may be imposed. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51649.

TRD-202100105
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 7, 2021

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Rio Grande Council of Governments

Public Notice - Vacancies for Region 14 - Upper Rio Grande Planning Group

REGION 14 UPPER RIO GRANDE FLOOD PLANNING GROUP

Nominations for voting membership Region 14 Upper Rio Grande Flood Planning Group

The Region 14 Upper Rio Grande Flood Planning Group (RFPG) is seeking nominations to fill voting positions on its Group. The positions are as follows:

(1) Water Utilities -- Term expires July 10, 2023

(1) River Authorities -- Term expires July 10, 2023

The Upper Rio Grande RFPG was established by the Texas Water Development Board on October 1, 2020, through the designation of initial flood planning group members. The Upper Rio Grande RFPG consists of portions of Brewster, Crane, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, and Ward, and portions of Andrews, Crockett, Ector, Edwards, Midland, Reagan, Schleicher, Sutton, Upton, Val Verde, and Winkler.

Article V. Section 3 of the adopted Upper Rio Grande RFPG Bylaws states that in order to be eligible for voting membership, a person must be capable of adequately representing the interest for which a member is sought, be willing to participate in the regional flood planning process, attend meetings, and abide by these bylaws.

Nominations (Nomination letter and a Résumé or biography of nominee are required) must be received by **February 22, 2021,** by 5:00 p.m., Mountain Standard Time, addressed to:

Annette Gutierrez

Administrative Officer

Region 14 Upper Rio Grande Flood Planning Group

8037 Lockheed Drive, Suite 100

El Paso, Texas 79925

Or

By email to: annetteg@riocog.org

TRD-202100109
Annette Gutierrez
RGCOG Executive Director
Rio Grande Council of Governments
Filed: January 7, 2021

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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