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register@sos.texas.gov

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Secretary of State - Ruth R. Hughs

Director - Robert Summers

Editor-in-Chief - Jill S. Ledbetter

Editors

Liz Cordell

Eddie Feng

Belinda Kirk

Cecilia Mena

Joy L. Morgan

Breanna Mutschler

Barbara Strickland

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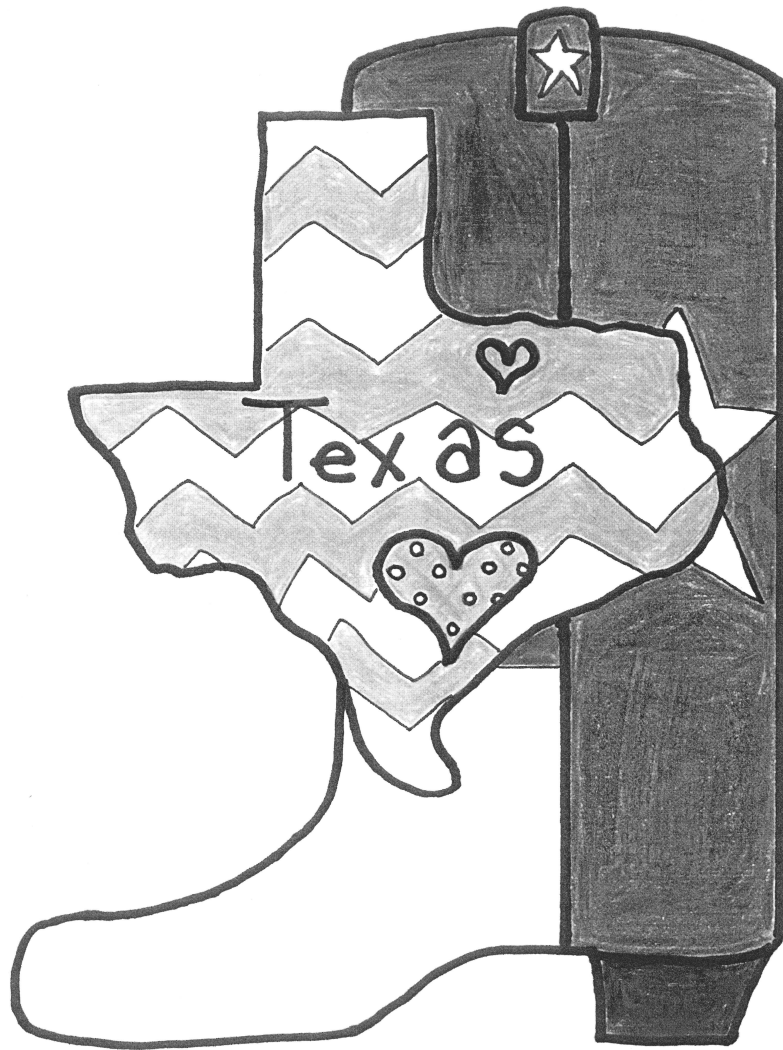
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THE GOVERNOR

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

Appointments

Appointments for February 1, 2021

Appointed to the Texas Appraiser Licensing and Certification Board, for a term to expire January 31, 2027, Ray C. "Chance" Bolton of Bee Cave, Texas (Mr. Bolton is being reappointed).

Appointed to the Texas Appraiser Licensing and Certification Board, for a term to expire January 31, 2027, Paola Escalante-Castillo of Weslaco, Texas (replacing Tony F. Peña of Lubbock, whose term expired).

Appointed to the Texas Appraiser Licensing and Certification Board, for a term to expire January 31, 2027, Martha Gayle Reid Lynch of El Paso, Texas (Ms. Lynch is being reappointed).

Appointed to the Texas Board of Nursing, for a term to expire January 31, 2027, Daryl Chambers of Grand Prairie, Texas (replacing Francis D. Stokes of Port Aransas, whose term expired).

Appointed to the Texas Board of Nursing, for a term to expire January 31, 2027, Allison P. Edwards, Dr. P.H. of Bellaire, Texas (Dr. Edwards is being reappointed).

Appointed to the Texas Board of Nursing, for a term to expire January 31, 2027, Kathy L. Leader-Horn of Granbury, Texas (Ms. Leader-Horn is being reappointed).

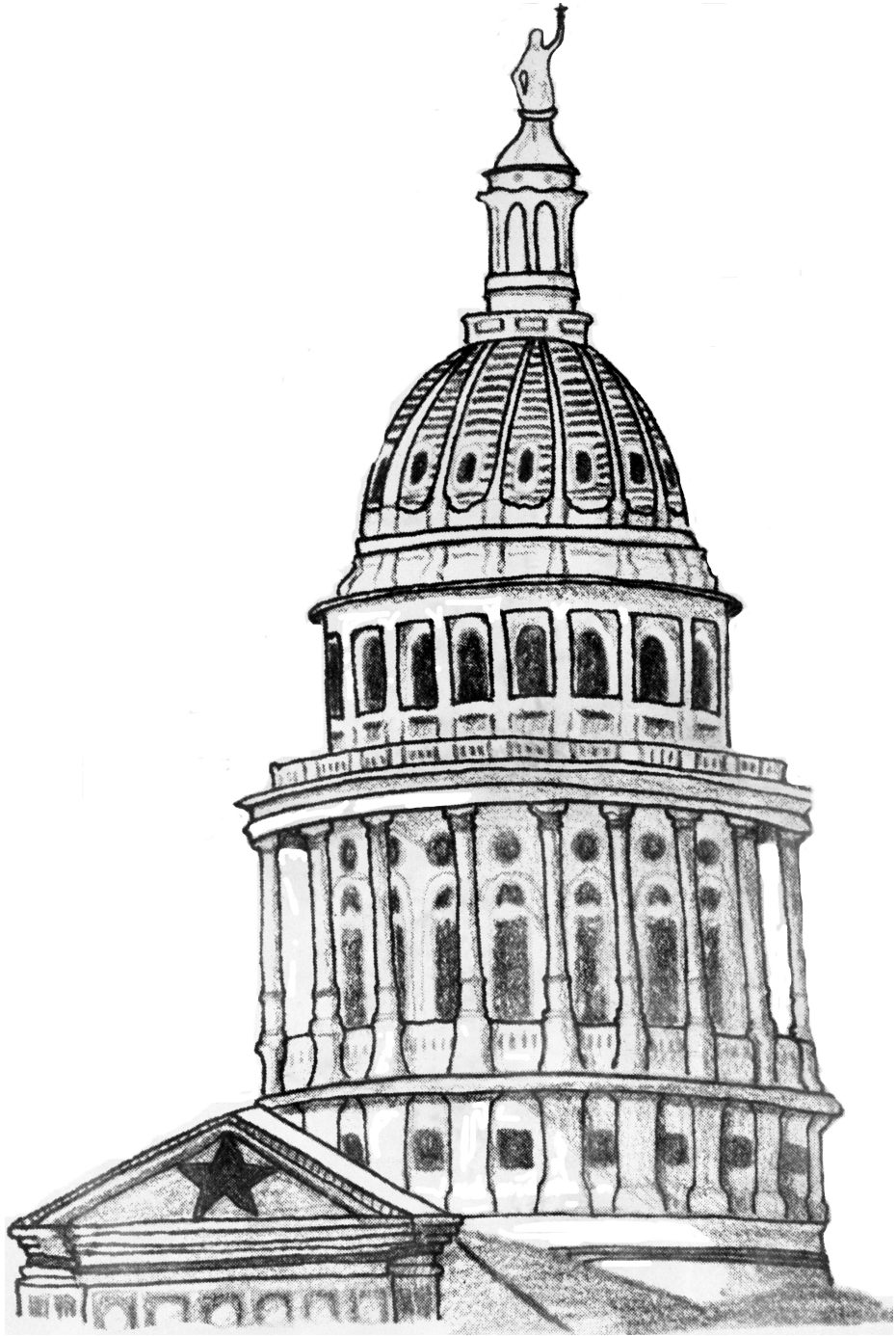
Appointed to the Texas Board of Nursing, for a term to expire January 31, 2027, David E. Saucedo, II of El Paso, Texas (Mr. Saucedo is being reappointed).

Appointed to the Cancer Prevention and Research Institute of Texas Oversight Committee, for a term to expire January 31, 2027, Donald R. "Dee" Margo, II of El Paso, Texas (Mayor Margo is being reappointed).

Greg Abbott, Governor

TRD-202100461





THE ATTORNEY GENERAL

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

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

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

Opinions

Opinion No. KP-0351

The Honorable Terry Canales

Chair, House Committee on Transportation

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether yard signs and a social media post qualify as an "announcement" for candidacy for another office, thus triggering the automatic resignation provision of article XI, section 11 of the Texas Constitution (RQ-0369-KP)

SUMMARY

Article XVI, section 65 of the Texas Constitution provides that certain district or county officers automatically resign from office upon announcing their candidacy for any other office of profit or trust under the laws of this State or the United States. Article XI, section 11 applies this provision to officers of a home-rule city that hold a term longer than two years. To qualify as an announcement under these provisions, the person's statement must be made in a public setting and be clear and unequivocal. Whether any given statement satisfies these requirements will involve questions of fact, but to the extent a person posts campaign signs on public property, visible to the general public, urging his or her election, a court would likely conclude that such acts constitute an announcement for purposes of article XVI, section 65.

Article XI, section 11 of the Texas Constitution requires that any vacancy in a home-rule municipal office with a term exceeding two years be filled by majority vote of the qualified voters at a special election.

If a city councilmember automatically resigned within 120 days of the general election in November, the special election to fill the vacancy should be held on the same day as the general election.

Article XVI, section 17 of the Texas Constitution provides that all officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified. Pursuant to this provision, office holders subject to the automatic resignation provision hold over in office until a successor is duly qualified.

A city councilmember may not rescind an announcement for candidacy to avoid application of the automatic resignation provision.

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

TRD-202100443

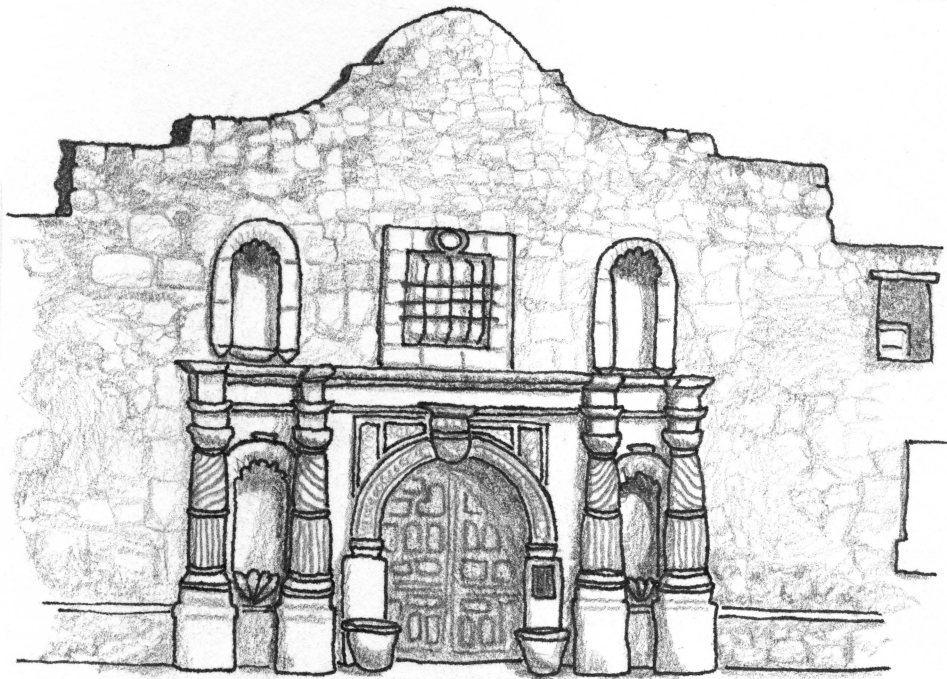
Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: February 2, 2021





EMERGENCY RULES

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

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 215. STATEWIDE TECHNOLOGY CENTERS FOR DATA AND DISASTER RECOVERY SERVICES

SUBCHAPTER B. DATA CENTER SERVICES FOR STATE AGENCIES AND LOCAL GOVERNMENT

1 TAC §215.13

The Texas Department of Information Resources (department) adopts on an emergency basis an amendment to 1 Texas Administrative Code Chapter 215, §215.13, in response to the COVID-19 emergency to address urgent statewide technology needs of state agencies and local governments during the pandemic.

As authorized by Texas Government Code § 2001.034, the department 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.

The emergency amendment to §215.13 adds the deployment, development, and maintenance of software applications, including software as a service products, to the definition of Data Center Services.

The emergency rule amendment is in furtherance of the Governor's March 13, 2020, disaster proclamation and all subsequent disaster declarations extensions regarding the COVID-19 pandemic. Texas is experiencing a significant increase in COVID-19 cases. In response to this pandemic emergency, agencies and local governments have an enhanced reliance on technology to enable employees to work remotely and serve the public remotely. That reliance further increases the need for cybersecurity protections provided through the department. Specifically, state agencies and local governments require software applications, including software as a service products, to be available through the Data Center Services program to address the needs of the public during the COVID-19 pandemic. The department accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this amendment providing access to certain services available to state agencies and local governments through the Data Center Services program.

The emergency rule amendment is adopted under the department's specific authority to adopt rules and guidelines regarding the Statewide Technology Centers, Texas Government Code § 2054.378, and the department's general rulemaking authority granted under Texas Government Code § 2054.052(a) to adopts rules necessary to address the department's enumerated responsibilities under Texas Government Code Chapter 2054.

No other statutes, articles, or codes are affected by the emergency rule.

§215.13. *Data Center Services.*

(a) DCS services include:

- (1) Mainframe services
- (2) Server services, including cloud computing services
- (3) Hosting and management of telecommunication hardware for emergency services
- (4) Storage services, including cloud hosted services
- (5) Bulk Print and mail services
- (6) Network services for DCS connectivity
- (7) Disaster Recovery services
- (8) Infrastructure Service Integration Management
- (9) Application Lifecycle Management
- (10) the deployment, development, and maintenance of software applications, including but not limited to the procurement, configuration, and integration of software as a service products.

(b) With the exception of subsection (a)(8) and (a)(10) of section, unless an exemption has been requested and approved by the department pursuant to §215.10(a)(1)(B) of this chapter, designated DCS Customers shall not procure the services specified in this section outside the DCS program.

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 February 2, 2021.

TRD-202100451

Katherine R. Fite

General Counsel

Department of Information Resources

Effective date: February 2, 2021

Expiration date: June 1, 2021

For further information, please call: (512) 475-4552



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 261. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID) PROGRAM--CONTRACTING

SUBCHAPTER K. EMERGENCY RULES FOR THE ICF/IID PROGRAM

26 TAC §261.351

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 261 Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) Program--Contracting, new §261.351, concerning an emergency rule related to leave during the COVID-19 pandemic. 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 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 §261.351 Emergency Rule Related to Leave During the COVID-19 Pandemic.

To protect individuals enrolled in the ICF/IID Program and the public health, safety, and welfare of the state during the COVID-19 pandemic, the emergency rule allows HHSC to pay a program provider for reserving a bed in a facility for an individual who takes COVID-19 therapeutic leave to reduce the risk of COVID-19 transmission. The emergency rule sets forth the requirements that a program provider must meet to receive payment (sometimes referred to as a bed hold payment) for an individual's COVID-19 therapeutic leave.

The emergency rule provides that HHSC recoups payments from the program provider if HHSC determines the program provider did not comply with the rule or makes an attestation that is inaccurate.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034, §531.0055, and §531.021, and Texas Human Resources Code, §32.021. 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 Government Code, §531.021, authorizes the Executive Commissioner of HHSC to adopt rules to administer federal funds and plan and direct the Medicaid program. Texas Human Resources Code, §32.021, authorizes the Executive Commissioner of HHSC to adopt rules governing the proper and efficient operation of the Medicaid program.

The new section implements Texas Government Code §531.0055 and §531.021, and Texas Human Resources Code, §32.021.

§261.351. Emergency Rule Related to Leave During the COVID-19 Pandemic.

(a) The following words and terms, when used in this section, have the following meanings.

(1) COVID-19 therapeutic leave--Leave described in a state plan amendment approved by the Centers for Medicare and Medicaid Services for payment to providers for reserving a bed in a facility for an individual who takes a temporary leave of absence to reduce the risk of COVID-19 transmission.

(2) Extended therapeutic leave--Leave described in §261.226(c) of this chapter (relating to Leaves).

(3) Facility--An intermediate care facility for individuals with an intellectual disability or related conditions.

(4) Full day--A 24-hour period extending from midnight to midnight.

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

(6) Individual--A person enrolled in the ICF/IID Program.

(7) Program provider--An entity with whom HHSC has a provider agreement.

(8) Provider agreement--A written agreement between HHSC and a program provider that obligates the program provider to deliver ICF/IID Program services.

(9) Revenue--This term does not include a loan or grant that a program provider is required to repay.

(10) Special leave--Leave described in §261.226(d) of this chapter.

(11) Staff member--An employee or contractor of a program provider.

(12) Therapeutic leave--Leave described in §261.266(b) of this chapter.

(b) If an individual is absent from a facility for one full day and such absence is not during a therapeutic, extended therapeutic, COVID-19 therapeutic, or special leave, the program provider must discharge the individual from the facility.

(c) COVID-19 therapeutic leave is in addition to the days allowed for therapeutic leave or extended therapeutic leave.

(d) If an individual takes COVID-19 therapeutic leave, the program provider must ensure that the individual's individual program plan specifies that the individual was absent from the facility to reduce the risk of COVID-19 transmission.

(e) A program provider must submit an HHSC bed hold payment attestation form, as described in subsection (f) of this section, and a request for payment for COVID-19 therapeutic leave to HHSC on or before April 30, 2021.

(f) For a program provider to receive payment for COVID-19 therapeutic leave, the program provider must submit a completed HHSC bed hold payment attestation form on or before the date the program provider requests payment for COVID-19 therapeutic leave. By signing an HHSC bed hold payment attestation form, a program provider:

(1) acknowledges that HHSC may recoup an overpayment made to the program provider if:

(A) HHSC determines, based on a federal or state audit or any other authorized third-party review, that the program provider:

(i) received an inappropriate payment, such as payment for more days than allowed for COVID-19 therapeutic leave;

(ii) received duplicate payments for services, such as payment for COVID-19 therapeutic leave for a day on which HHSC paid the program provider for therapeutic, extended therapeutic, or special leave; or

(iii) received funding from any other source to pay for the days of COVID-19 therapeutic leave for which payment is requested; and

(B) the program provider's revenue for the quarters described in the state plan amendment exceeded its revenue:

(i) during the quarter of December 2019 through February 2020; or

(ii) an alternative pre-pandemic period authorized in writing by HHSC based on a request from the program provider; and

(2) attests that, during the time period for which payment is requested, the program provider:

(A) did not lay off any staff members who were working on March 19, 2020, due to lack of work, not work performance; and

(B) maintained staff member wages and benefits at least at the levels that existed on March 19, 2020.

(g) When submitting a request for payment, a program provider must use the designated leave code that identifies the request as payment for COVID-19 therapeutic leave.

(h) If HHSC determines, based on a federal, state, or third-party review or audit, that a program provider is not in compliance with this section or the program provider makes an attestation described in subsection (f)(2) of this section that is inaccurate, HHSC recoups payment made for COVID-19 therapeutic leave from the program provider.

(i) An HHSC bed hold payment attestation form covers payments for COVID-19 therapeutic leave requested only for the dates identified on the form. A program provider must submit a separate form for each provider agreement that the program provider has with 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 29, 2021.

TRD-202100412

Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: January 29, 2021
Expiration date: May 28, 2021
For further information, please call: (512) 438-4287

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

The Texas Workforce Commission (TWC) adopts on an emergency basis the following new sections to Chapter 815, relating to Unemployment Insurance:

Subchapter A. General Provisions, §815.4

Subchapter F. Extended Benefits, §815.175

TWC adopts on an emergency basis amendments to the following sections of Chapter 815, relating to Unemployment Insurance:

Subchapter G. CARES Act Provisions, §§815.180 - 815.185

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

TWC adopts this rulemaking on an emergency basis in accordance with the Families First Coronavirus Response Act, Public Law (P.L.) 116 - 127, specifically:

--Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020, enacted March 18, 2020;

--the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), P.L. 116 - 136, enacted March 27, 2020;

--the Consolidated Appropriations Act, 2021, P.L. 116 - 260, enacted December 27, 2020, which contained the Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act or CAA); and

--Texas Labor Code, §209.205.

The CARES Act provided for new entitlement programs including Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), Federally Reimbursed Waiting Week (FRWW), and Pandemic Unemployment Assistance (PUA).

CAA amended the CARES Act in multiple ways, including allowing states the option to waive PUA overpayments, providing for the creation of a new Mixed Earner Unemployment Compensation (MEUC) program, and new requirements concerning the coordination of programs.

Previously, each CARES Act program contained a provision for the waiver of overpayments with the exception of PUA. TWC operationalized these requirements through administrative rulemaking in 40 Texas Administrative Code §815.12 and §815.183. MEUC operates similarly to another CARES Act program, FPUC.

As addressed in this rulemaking, in order for TWC to adjudicate the waiver of PUA overpayments and operationalize MEUC, Chapter 815, Subchapter G must be amended. The amended coordination of program rules must also be included in §815.181.

Under new guidance from the US Department of Labor, PUA has been removed from the 15 percent fraud penalty exception in §815.185(a). For the same reason, MEUC has been added.

Texas Labor Code, §209.025 provides that "Notwithstanding any other provision of this subchapter, the commission by rule may adjust the extended benefit eligibility period as necessary to maximize the receipt of any fully funded federal extended unemployment benefits, if full federal funding for those benefits is available."

Section 266 of the CAA also provides a state option to disregard the requirement of §203(b)(1)(B) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 USC §3304 note) that "no extended benefit period may begin before the fourteenth week after the close of a prior extended benefit period with respect to such State." Currently, this flexibility applies between November 1, 2020, and December 31, 2021.

To ensure that TWC maximizes the federal funding, TWC is adopting the flexibility provided by §266 of the CAA with a retroactivity provision and generally applicable language should this flexibility be extended into the future. This rule also accounts for possible future situations where the fourteen-week period is reduced, but not eliminated. This provision is applicable to the Insured Unemployment Rate and the Total Unemployment Rate trigger.

Finally, as discussions continue to evolve concerning the CARES Act and potential extensions of or future benefits programs, TWC is adding a federal conformity provision to the Chapter 815 rules. This provision ensures that if federal statutes or regulations change before TWC has a reasonable opportunity to amend its rules, that TWC will continue to operate in conformity with federal law.

TWC's three-member Commission (Commission) must take immediate action in order to operationalize these new federal programs, state options, and requirements. During this surge of unemployment, it is vital that Texans have access to the federal benefit programs and options authorized by the CARES Act as well as the potential to have their PUA overpayment waived as adjudicated on a case-by-case basis. Out-of-work Texans who are struggling to pay their bills need access to these unemployment benefits. These benefits also serve as a much-needed stabilizing factor in local economies.

Therefore, the Commission finds that imminent peril to the public welfare requires adoption of rules without 30 days' notice in the Texas Register. On the same basis, the Commission also finds that imminent peril to the public welfare requires adoption of rules with an expedited effective date that is effective immediately upon filing with the Secretary of State, so that these rules can be implemented immediately under the emergency rulemaking provisions of Texas Government Code, §2001.034 and §2001.036.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts on an emergency basis the following new section to Subchapter A:

§815.4. Conformity with Federal Law

New §815.4 provides that, notwithstanding any other provision of Chapter 815, if the US Secretary of Labor holds that a provision of Chapter 815 does not conform with federal statute or regulation, TWC may administer Chapter 815 to conform with the federal statute or regulation until it has a reasonable opportunity to amend the nonconforming provision.

SUBCHAPTER F. EXTENDED BENEFITS

TWC adopts on an emergency basis the following new section to Subchapter F:

§815.175. Federal Waiver to Preserve Access to Extended Benefits

New §815.175 states that pursuant to Texas Unemployment Compensation Act, §209.025, if full federal funding for Extended Benefits (EB) is available and TWC is permitted to reduce or eliminate the number of weeks between the end of an extended benefit period and the beginning of a new extended benefit period required by the Extended Unemployment Compensation Act of 1970, §203(b)(1)(B), TWC shall reduce or eliminate the number of weeks accordingly to maximize the receipt of any fully funded federal EB. Section 815.175 operates retroactively, if applicable.

SUBCHAPTER G. CARES ACT PROVISIONS

TWC adopts on an emergency basis amendments to Subchapter G:

§815.180. Definitions

Section 815.180 is amended to add new paragraph (4), which defines MEUC as the Mixed Earner Unemployment Compensation provisions of §2104 of the CARES Act. Current paragraphs (4) and (5) are renumbered as paragraphs (5) and (6).

§815.181. Coordination of CARES Act

Section 815.181 is amended to add new subsections (c) - (g), which further dictate the coordination of programs, especially how they relate to PEUC, EB, and MEUC.

New §815.181(c) provides that if a claimant is receiving PEUC, EB, or PUA, and becomes eligible for regular compensation, the claimant must stop collecting PEUC, EB, or PUA and file a new claim for regular compensation, with the following exception: For a claimant whose regular compensation benefit year expires after December 27, 2020, if the claimant is entitled to and has a remaining entitlement to PEUC with respect to that benefit year, TWC shall establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all PEUC payable with respect to the prior benefit year if the individual's weekly benefit amount of regular compensation in the new benefit year is at least \$25 less than the individual's weekly benefit amount on the PEUC claim.

New §815.181(d) provides that a claimant who is receiving EB for the week of unemployment that includes December 27, 2020, shall not be eligible for PEUC until the individual has exhausted all rights to EB.

New §815.181(e) states that for weeks of unemployment beginning January 3, 2021, a claimant's eligibility for EB shall be considered to include any week that begins after the individual exhausts all rights to PEUC and that falls during an EB period that began after the date the individual exhausted all rights to PEUC. This applies even if the claimant's benefit year has expired, provided the state is in an EB period as of the date the individual exhausts PEUC.

New §815.181(f) replaces current §815.181(c). It still provides that FPUC provides for additional compensation to a claimant collecting regular compensation, PEUC, PUA, EB, a Shared Work program under Chapter 215 of the Texas Unemployment Compensation Act, Trade Readjustment Allowances (TRA), and Disaster Unemployment Assistance (DUA), and that claimants will receive FPUC payments concurrently with payments under these programs. The last sentence referencing dates for FPUC has been removed.

New subsection (g) provides that MEUC provides for additional compensation to a claimant collecting regular compensation, PEUC, EB, a Shared Work program under Chapter 215 of the Texas Unemployment Compensation Act, TRA, and DUA. It does not provide additional compensation to a claimant collecting PUA. Claimants will receive MEUC payments concurrently with payments under these programs.

§815.182. Appeals

Section 815.182 is amended to add MEUC to §815.182(a) - (c).

§815.183. Waiver

Section 815.183 is amended to remove subsection (b). References to PUA and MEUC as being federal extended unemployment compensation programs and therefore subject to §815.12 of this chapter have been added.

§815.184. Overpayments

Section 815.184 is amended to add MEUC to subsections (a) and (c) as well as to remove the PUA waiver prohibition from subsection (b).

§815.185. Fraud

Section 815.185 is amended to add MEUC to subsections (a) and (b) and remove PUA from subsection (a).

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §815.4

STATUTORY AUTHORITY

The new rule is adopted on an emergency basis pursuant to:

--Texas Government Code, §2001.034, which provides TWC with the authority to adopt rules on an emergency basis;

--Texas Labor Code, §209.025, which provides TWC with authority to adopt rules necessary to maximize the receipt of any fully federally funded extended unemployment benefits, if full federal funding of those benefits is available;

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and

--Texas Labor Code, §301.062, which provides TWC with the power to make findings and determine issues under Title 4 of the Texas Labor Code.

The effective date of the rule shall be immediate upon the date of filing the adoption with the Secretary of State pursuant to Texas Government Code, §2001.036(a)(2).

No other statutes, articles, or codes are affected by the emergency rule.

§815.4. Conformity with Federal Law.

Notwithstanding any other provision of this chapter, if the US Secretary of Labor holds that a provision of this chapter does not conform with federal statute or regulation, the Agency may administer this chapter to conform with the federal statute or regulation until the Commission has a reasonable opportunity to amend the nonconforming provision.

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 February 2, 2021.

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Les Trobman

General Counsel

Texas Workforce Commission

Effective date: February 2, 2021

Expiration date: June 1, 2021

For further information, please call: (512) 689-9855



SUBCHAPTER F. EXTENDED BENEFITS

40 TAC §815.175

STATUTORY AUTHORITY

The new rule is adopted on an emergency basis pursuant to:

--Texas Government Code, §2001.034, which provides TWC with the authority to adopt rules on an emergency basis;

--Texas Labor Code, §209.025, which provides TWC with authority to adopt rules necessary to maximize the receipt of any fully federally funded extended unemployment benefits, if full federal funding of those benefits is available;

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and

--Texas Labor Code, §301.062, which provides TWC with the power to make findings and determine issues under Title 4 of the Texas Labor Code.

The effective date of the rule shall be immediate upon the date of filing the adoption with the Secretary of State pursuant to Texas Government Code, §2001.036(a)(2).

No other statutes, articles, or codes are affected by the emergency rule.

§815.175. Federal Waiver to Preserve Access to Extended Benefits.

Pursuant to §209.025 of the Act, if full federal funding for Extended Benefits is available and the Agency is permitted to reduce or eliminate the number of weeks between the end of an extended benefit period and the beginning of a new extended benefit period required by §203(b)(1)(B) of the Extended Unemployment Compensation Act of 1970, the Agency shall reduce or eliminate the number of weeks accordingly to maximize the receipt of any fully funded federal Extended Benefits. This section operates retroactively, if applicable.

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.

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General Counsel

Texas Workforce Commission

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For further information, please call: (512) 689-9855



SUBCHAPTER G. CARES ACT PROVISIONS

40 TAC §§815.180 - 815.185

STATUTORY AUTHORITY

The amendments are adopted on an emergency basis pursuant to:

--Texas Government Code, §2001.034, which provides TWC with the authority to adopt rules on an emergency basis;

--Texas Labor Code, §209.025, which provides TWC with authority to adopt rules necessary to maximize the receipt of any fully federally funded extended unemployment benefits, if full federal funding of those benefits is available;

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and

--Texas Labor Code, §301.062, which provides TWC with the power to make findings and determine issues under Title 4 of the Texas Labor Code.

The effective date of these rules shall be immediate upon the date of filing the adoption with the Secretary of State pursuant to Texas Government Code, §2001.036(a)(2).

No other statutes, articles, or codes are affected by the emergency rule.

§815.180. Definitions.

The following definitions shall apply to this subchapter:

(1) CARES Act--refers to the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116 - 136; TITLE II--Assistance for American Workers, Families, and Businesses; Subtitle A--Unemployment Insurance Provisions.

(2) FPUC--refers to the Federal Pandemic Unemployment Compensation provisions of §2104 of the CARES Act.

(3) FRWW--refers to the Federally Reimbursed Waiting Week provisions of §2105 of the CARES Act.

(4) MEUC--refers to the Mixed Earner Unemployment Compensation provisions of §2104 of the CARES Act.

(5) [(4)] PEUC--refers to the Pandemic Emergency Unemployment Compensation provisions of §2107 of the CARES Act.

(6) [(5)] PUA--refers to the Pandemic Unemployment Assistance provisions of §2102 of the CARES Act.

§815.181. Coordination of CARES Act Programs.

(a) For a claimant who is eligible for regular compensation, including Unemployment Compensation for Federal Employees (UCFE)

and Unemployment Compensation for Ex-servicemembers (UCX), the following order of payment applies:

(1) The claimant must first apply for and receive regular compensation. The amount and duration of these benefits are as defined by the Act;

(2) if the claimant exhausts regular compensation, the claimant may then be eligible to receive PEUC;

(3) if the claimant exhausts PEUC and the state has "triggered on" to Extended Benefits (EB) under Chapter 209 of the Act, the claimant may then be eligible to receive EB;

(4) if the State is not "triggered on" to EB or the claimant exhausts EB, the claimant may then be eligible to receive PUA. If the State "triggers on" to EB during the period in which the claimant is collecting PUA and the claimant has not previously exhausted entitlement to EB for the respective benefit year, then the claimant must stop collecting PUA and file for EB; and

(5) the claimant meets the qualifications to receive Trade Readjustment Allowances (TRA), such benefits will be payable after regular compensation, PEUC, and EB if "triggered on," but prior to PUA.

(b) For a claimant who is not eligible for regular compensation, PEUC, EB, or TRA, and who meets the federal requirements, the claimant may be eligible to collect PUA.

(c) If a claimant is receiving PEUC, EB, or PUA, and becomes eligible for regular compensation, the claimant must stop collecting PEUC, EB, or PUA and file a new claim for regular compensation, with the following exception: For a claimant whose regular compensation benefit year expires after December 27, 2020, if the claimant is entitled to and has a remaining entitlement to PEUC with respect to that benefit year, the Agency shall establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all PEUC payable with respect to the prior benefit year if the individual's weekly benefit amount of regular compensation in the new benefit year is at least \$25 less than the individual's weekly benefit amount on the PEUC claim.

(d) A claimant who is receiving EB for the week of unemployment that includes December 27, 2020, shall not be eligible for PEUC until the individual has exhausted all rights to EB.

(e) For weeks of unemployment beginning January 3, 2021, a claimant's eligibility for EB shall be considered to include any week that begins after the individual exhausts all rights to PEUC and that falls during an EB period that began after the date the individual exhausted all rights to PEUC. This applies even if the claimant's benefit year has expired, provided the state is in an EB period as of the date the individual exhausts PEUC.

(f) [(e)] FPUC provides for additional compensation to a claimant collecting regular compensation, PEUC, PUA, EB, a Shared Work program under Chapter 215 of the Act, TRA, and Disaster Unemployment Assistance (DUA). Claimants will receive FPUC payments concurrently with payments under these programs. [This applies for the benefit week ending April 4, 2020 through the benefit week ending July 25, 2020 unless subsequently amended by federal law.]

(g) MEUC provides for additional compensation to a claimant collecting regular compensation, PEUC, EB, a Shared Work program under Chapter 215 of the Act, TRA, and DUA. It does not provide additional compensation to a claimant collecting PUA. Claimants will receive MEUC payments concurrently with payments under these programs.

§§815.182. *Appeals.*

(a) A claimant may appeal an adverse FPUC, FRWW, MEUC, PEUC, or PUA determination pursuant to the provisions and timeframes of Chapter 212 of the Act and the provisions set out in §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations), §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages).

(b) An employer is not a "party of interest," [;] pursuant to §815.15(c) of this chapter (relating to Parties with Appeal Rights), to a FPUC, FRWW, MEUC, PEUC, or PUA determination and therefore does not have appeal rights. An employer may appear at a FPUC, FRWW, MEUC, PEUC, or PUA hearing to offer evidence when appropriate.

(c) When considering an appeal involving FPUC and/or MEUC, the Appeal Tribunal and the Commission shall look to the merits of the denial of the underlying benefit when determining eligibility for FPUC and/or MEUC payments.

§§815.183. *Waiver.*

[(a)] FPUC, [the] FRWW, MEUC, PUA, and PEUC are federal extended unemployment compensation programs and therefore subject to §815.12 of this chapter (relating to Waiver of Repayment and Recovery of Federal Extended Unemployment Compensation Overpayments).

[(b) PUA, as provided by P.L. 116 - 136 §2102, is related to Disaster Unemployment Assistance programs regulated under Title 20, Part 625, Code of Federal Regulations. Therefore, PUA does not constitute a federal extended unemployment compensation program and the waiver provisions of §815.12 of this chapter do not apply.]

§§815.184. *Overpayments.*

(a) Unless a FPUC, FRWW, MEUC, or PEUC overpayment is otherwise recovered or waived, the Agency shall, during the three-year period after the date the claimant received the payment of FPUC, FRWW, MEUC, or PEUC to which the claimant was not entitled, recover the overpayment by deductions from any sums payable to the claimant. No single deduction may exceed 50 percent of the amount otherwise payable to the claimant.

(b) Unless a PUA overpayment is otherwise recovered, the Agency shall recover the overpayment by deductions from any sums payable to the claimant. A PUA overpayment [~~may not be waived per §815.183(b) of this chapter and~~] is not subject to the three-year period limitation stated in subsection (a) of this section. No single deduction may exceed 50 percent of the amount otherwise payable to the claimant.

(c) If a claimant has an unemployment benefits overpayment with an appropriate agency in another state, and the Agency has a reciprocal arrangement with that other state agency under §211.004 of the Act, the Agency shall deduct 50 percent per each single deduction of the amount of FPUC, FRWW, MEUC, PEUC, or PUA otherwise payable to the claimant.

§§815.185. *Fraud.*

(a) A penalty for fraudulently obtaining benefits under §214.003 of the Act shall not apply to fraudulently obtained FPUC, FRWW, MEUC, and PEUC [; and PUA] benefits forfeited.

(b) The Agency and the Commission shall examine the underlying payment or statement which precipitated the fraud determination when examining FPUC and/or MEUC fraud.

(c) In determining disqualification for fraud under PUA, the provisions of 20 C.F.R. §625.14(i) shall apply.

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 February 2, 2021.

TRD-202100449

Les Trobman

General Counsel

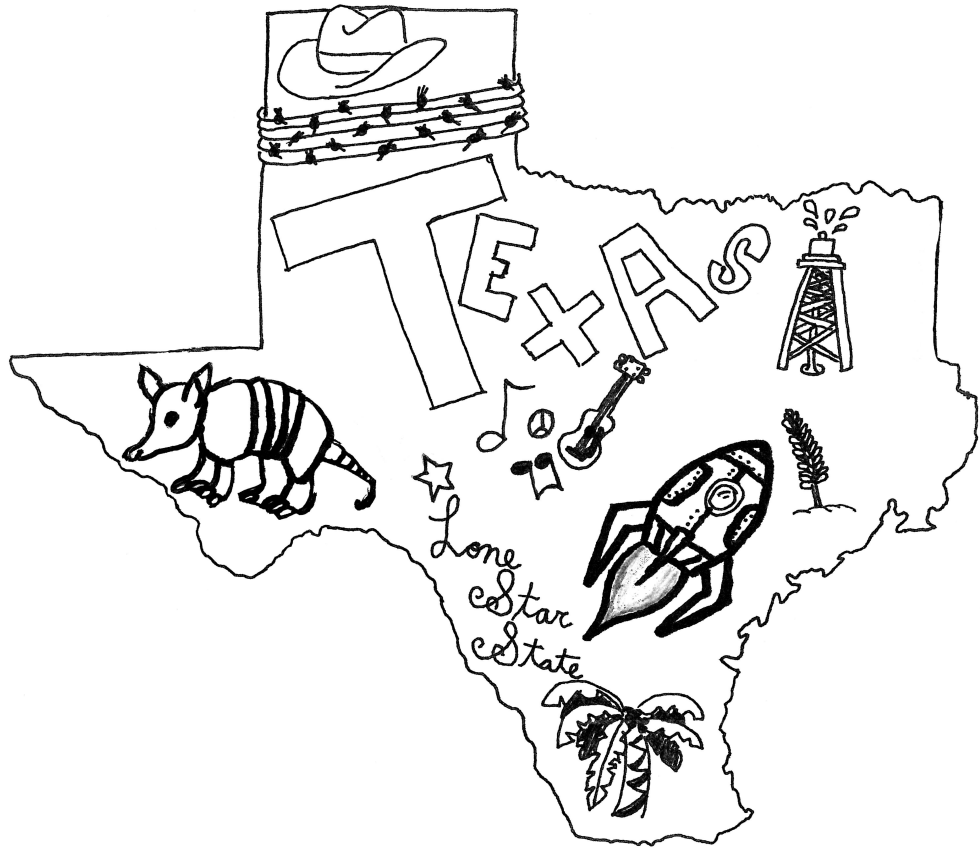
Texas Workforce Commission

Effective date: February 2, 2021

Expiration date: June 1, 2021

For further information, please call: (512) 689-9855





PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §353.4, §353.7

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §353.4, concerning Managed Care Organization Requirements Concerning Out-of-Network Providers; and new §353.7, concerning Coordination of Benefits with Primary Health Insurance Coverage.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Texas Government Code, §533.038(g), added by Senate Bill (S.B.) 1207, 86th Legislature, Regular Session, 2019. Senate Bill 1207 requires HHSC to establish a process for a Medicaid health care managed care organization (MCO) to allow a member with complex medical needs, who has established a relationship with a specialty provider through the member's primary health benefit plan, to continue receiving care from that specialty provider, whether or not that provider is in the health care MCO's network.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §353.4 adds new subsection (d) which sets forth the reimbursement methodology for a Medicaid health care MCO to pay out-of-network specialty providers performing services in accordance with proposed new §353.7. The proposed amendment also reformats the section and updates references.

Proposed new §353.7 sets forth the requirements imposed on Medicaid health care MCOs relating to certain out-of-network specialty providers. Subsection (a) clarifies that the rule applies to a member age 20 or younger who has complex medical needs and who has and maintains health care coverage under a primary health benefit plan. Subsection (b) defines "primary health benefit plan" in a manner consistent with Texas Human Resources Code, §32.0422(a). Subsection (c) defines "complex medical needs." Subsection (d) defines "specialty provider" in a manner consistent with the specialty provider list already established in Chapter 3.1 of the Uniform Managed Care Manual (UMCM). Subsection (e) requires a health care MCO to utilize the reasonable reimbursement methodology for authorized services performed by out-of-network providers described in renumbered §353.4(f)(2) (previously §353.4(d)(2)), until: (1) an alternate reimbursement agreement is reached with the member's

specialty provider; (2) the member is no longer enrolled in a primary health benefit plan; (3) the member or the member's legally authorized representative agree to select an alternate specialty provider; or (4) the member is no longer enrolled in the health care MCO.

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 not affect fees paid to HHSC;
- (5) the proposed rules will create a new rule;
- (6) the proposed rules will expand an existing rule;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules apply to health care MCOs, which are not small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the

public benefit will be that a member with complex medical needs who has established a relationship with a specialty provider will be able to continue receiving care from that provider when the criteria outlined in the rules are met.

Trey Wood has also determined that for the first five years the rules are in effect, there may be an economic cost to persons who are required to comply with the proposed rules. A health care MCO may need to train staff to implement the requirement to allow a member to continue seeing a specialty provider as described in the new rule. However, HHSC lacks sufficient information to determine cost to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing is scheduled for February 26, 2021 starting at 3:00 p.m. (central time) to be held virtually. You can register for the meeting at:

<https://attendee.gotowebinar.com/register/8673928896775152139>

The webinar ID is: 273-729-803.

Persons requiring further information, special assistance, or accommodations should contact Mary Valente at (512) 438-4387.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) 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 21R032" in the subject line.

In addition to general comments regarding the proposed rule, HHSC is requesting comments on how to distinguish a subset of durable medical equipment suppliers or of other provider types that might possibly be considered specialty providers based on the services they provide.

STATUTORY AUTHORITY

The amendment and new section 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; §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and to adopt rules and standards for program administration; and

Section 8 of S.B. 1207, in implementing Texas Government Code, §533.038.

The amendment and new section implement Texas Government Code §531.0055 and Texas Government Code, §533.038.

§353.4. *Managed Care Organization Requirements Concerning Out-of-Network Providers.*

(a) Network adequacy. HHSC is the state agency responsible for overseeing and monitoring the Medicaid managed care program. Each managed care organization (MCO) participating in the Medicaid managed care program must offer a network of providers that is sufficient to meet the needs of the Medicaid population who are MCO members. HHSC monitors MCO members' access to an adequate provider network through reports from the MCOs and complaints received from providers and members. Certain reporting requirements are discussed in subsection (g) [(f)] of this section.

(b) MCO requirements concerning coverage for treatment of members by out-of-network providers for non-emergency services.

(1) Nursing facility services. A health care MCO must reimburse an out-of-network nursing facility for medically necessary services authorized by HHSC [the Texas Department of Aging and Disability Services (DADS)], using the reasonable reimbursement methodology in subsection (f) [(e)] of this section. Nursing facility add-on services are considered "other authorized services" under paragraph (2) of this subsection, and are authorized by STAR+PLUS MCOs.

(2) Other authorized services. The MCO must allow referral of its member(s) to an out-of-network provider, must timely issue the proper authorization for such referral, and must timely reimburse the out-of-network provider for authorized services provided if the criteria in this paragraph are met. If all of the following criteria are not met, an out-of-network provider is not entitled to Medicaid reimbursement for non-emergency services:

(A) Medicaid covered services are medically necessary and these services are not available through an in-network provider;

(B) a participating provider currently providing authorized services to the member requests authorization for such services to be provided to the member by an out-of-network provider; and

(C) the authorized services are provided within the time period specified in the MCO's authorization. If the services are not provided within the required time period, a new request for referral from the requesting provider must be submitted to the MCO prior to the provision of services.

(c) MCO requirements concerning coverage for treatment of members by out-of-network providers for emergency services.

(1) An MCO may not refuse to reimburse an out-of-network provider for medically necessary emergency services.

(2) Health care MCO requirements concerning emergency services.

(A) A health care MCO may not refuse to reimburse an out-of-network provider for post-stabilization care services provided as a result of the MCO's failure to authorize a timely transfer of a member.

(B) A health care MCO must allow its members to be treated by any emergency services provider for emergency services, and services to determine if an emergency condition exists. The health care MCO must pay for such services.

(C) A health care MCO must reimburse for transport provided by an ambulance provider for a Medicaid recipient whose

condition meets the definition of an emergency medical condition. Facility-to-facility transports are considered emergencies if the required treatment for the emergency medical condition, as defined in §353.2 of this subchapter (relating to Definitions), is not available at the first facility and the MCO has not included payment for such transports in the hospital reimbursement.

(D) A health care MCO is prohibited from requiring an authorization for emergency services or for services to determine if an emergency condition exists.

(3) Dental MCO requirements concerning emergency services.

(A) A dental MCO must allow its members to be treated for covered emergency services that are provided outside of a hospital or ambulatory surgical center setting, and for covered services provided outside of such settings to determine if an emergency condition exists. The dental MCO must pay for such services.

(B) A dental MCO is prohibited from requiring an authorization for the services described in subparagraph (A) of this paragraph.

(C) A dental MCO is not responsible for payment of non-capitated emergency services and post-stabilization care provided in a hospital or ambulatory surgical center setting, or devices for craniofacial anomalies. A dental MCO is not responsible for hospital and physician services, anesthesia, drugs related to treatment, and post-stabilization care for:

- (i) a dislocated jaw, traumatic damage to a tooth, and removal of a cyst;
- (ii) an oral abscess of tooth or gum origin; and
- (iii) craniofacial anomalies.

(D) The services and benefits described in subparagraph (C) of this paragraph are reimbursed:

- (i) by a health care MCO, if the member is enrolled in a managed care program; or
- (ii) by HHSC's claims administrator, if the member is not enrolled in a managed care program.

(d) Health care MCO requirements concerning coverage for services provided to certain members by an out-of-network "specialty provider" as that term is defined in §353.7(d) of this subchapter (relating to Coordination of Benefits with Primary Health Insurance Coverage).

(1) A health care MCO may not refuse to reimburse an out-of-network "specialty provider" enrolled as a provider in the Texas Medicaid program for services provided to a member under the circumstances set forth in §353.7 of this subchapter.

(2) In reimbursing a provider for the services described in paragraph (1) of this subsection, a health care MCO must use the reasonable reimbursement methodology in subsection (f)(2) of this section.

(e) [(d)] An MCO may be required by contract with HHSC to allow members to obtain services from out-of-network providers in circumstances other than those described in subsections (b) - (d) [(b) - (e)] of this section.

(f) [(e)] Reasonable reimbursement methodology.

- (1) Out-of-network nursing facilities.

(A) Out-of-network nursing facilities must be reimbursed:

(i) at or above ninety-five percent of the nursing facility unit rate established by HHSC for the dates of service for services provided inside of the MCO's service area; and

(ii) at or above one hundred percent of the nursing facility unit rate for the date of services for services provided outside of the MCO's service area.

(B) The nursing facility unit rate refers to the Medicaid fee-for-service (FFS) daily rate for nursing facility providers as determined by HHSC. The rate includes items such as room and board, medical supplies and equipment, personal needs items, social services, and over-the-counter drugs. The nursing facility unit rate also includes professional and general liability insurance and applicable nursing facility rate enhancements. The nursing facility unit rate excludes nursing facility add-on services.

(2) Emergency and authorized services performed by out-of-network providers.

(A) Except as provided in §353.913 of this chapter (relating to Managed Care Organization Requirements Concerning Out-of-Network Outpatient Pharmacy Services) or subsection (j)(2) [(i)(2)] of this section, the MCO must reimburse an out-of-network, in-area service provider the Medicaid FFS rate in effect on the date of service less five percent, unless the parties agree to a different reimbursement amount.

(B) Except as provided in §353.913 of this chapter, an MCO must reimburse an out-of-network, out-of-area service provider at 100 percent of the Medicaid FFS rate in effect on the date of service, unless the parties agree to a different reimbursement amount, until the MCO arranges for the timely transfer of the member, as determined by the member's attending physician, to a provider in the MCO's network.

(3) For purposes of this subsection, the Medicaid FFS rates are defined as those rates for providers of services in the Texas Medicaid program for which reimbursement methodologies are specified in Chapter 355 of this title (relating to Reimbursement Rates), exclusive of the rates and payment structures in Medicaid managed care.

(g) [(f)] Reporting requirements.

(1) Each MCO that contracts with HHSC to provide health care services or dental services to members in a service area must submit quarterly information in its Out-of-Network quarterly report to HHSC.

(2) Each report submitted by an MCO must contain information about members enrolled in each HHSC Medicaid managed care program provided by the MCO. The report must include the following information:

(A) the types of services provided by out-of-network providers for the MCO's members;

(B) the scope of services provided by out-of-network providers to the MCO's members;

(C) for a health care MCO, the total number of hospital admissions, as well as the number of admissions that occur at each out-of-network hospital. Each out-of-network hospital must be identified;

(D) for a health care MCO, the total number of emergency room visits, as well as the total number of emergency room visits that occur at each out-of-network hospital. Each out-of-network hospital must be identified;

(E) total dollars for paid claims by MCOs, other than those described in subparagraphs (C) and (D) of this paragraph, as well as total dollars billed by out-of-network providers for other services; and

(F) any additional information required by HHSC.

(3) HHSC determines the specific form of the report described in this subsection and includes the report form as part of the Medicaid managed care contract between HHSC and the MCOs.

(h) ~~[(g)]~~ Utilization.

(1) Upon review of the reports described in subsection (g) ~~[(h)]~~ of this section that are submitted to HHSC by the MCOs, HHSC may determine that an MCO exceeded maximum out-of-network usage standards set by HHSC for out-of-network access to health care services and dental services during the reporting period.

(2) Out-of-network usage standards.

(A) Inpatient admissions: No more than 15 percent of a health care MCO's total hospital admissions, by service area, may occur in out-of-network facilities.

(B) Emergency room visits: No more than 20 percent of a health care MCO's total emergency room visits, by service area, may occur in out-of-network facilities.

(C) Other services: For services that are not included in subparagraph (A) or (B) of this paragraph, no more than 20 percent of total dollars for paid claims by the MCO for services provided may be provided by out-of-network providers.

(3) Special considerations in calculating a health care MCO's out-of-network usage of inpatient admissions and emergency room visits.

(A) In the event that a health care MCO exceeds the maximum out-of-network usage standard set by HHSC for inpatient admissions or emergency room visits, HHSC may modify the calculation of that health care MCO's out-of-network usage for that standard if:

(i) the admissions or visits to a single out-of-network facility account for 25 percent or more of the health care MCO's admissions or visits in a reporting period; and

(ii) HHSC determines that the health care MCO has made all reasonable efforts to contract with that out-of-network facility as a network provider without success.

(B) In determining whether the health care MCO has made all reasonable efforts to contract with the single out-of-network facility described in subparagraph (A) of this paragraph, HHSC considers at least the following information:

(i) how long the health care MCO has been trying to negotiate a contract with the out-of-network facility;

(ii) the in-network payment rates the health care MCO has offered to the out-of-network facility;

(iii) the other, non-financial contractual terms the health care MCO has offered to the out-of-network facility, particularly those relating to prior authorization and other utilization management policies and procedures;

(iv) the health care MCO's history with respect to claims payment timeliness, overturned claims denials, and provider complaints;

(v) the health care MCO's solvency status; and

(vi) the out-of-network facility's reasons for not contracting with the health care MCO.

(C) If the conditions described in subparagraph (A) of this paragraph are met, HHSC may modify the calculation of the health care MCO's out-of-network usage for the relevant reporting period and standard by excluding from the calculation the inpatient admissions or emergency room visits to that single out-of-network facility.

(i) ~~[(h)]~~ Provider complaints.

(1) HHSC accepts provider complaints regarding reimbursement for or overuse of out-of-network providers and conducts investigations into any such complaints.

(2) When a provider files a complaint regarding out-of-network payment, HHSC requires the relevant MCO to submit data to support its position on the adequacy of the payment to the provider. The data includes a copy of the claim for services rendered and an explanation of the amount paid and of any amounts denied.

(3) Not later than the 60th day after HHSC receives a provider complaint, HHSC notifies the provider who initiated the complaint of the conclusions of HHSC's investigation regarding the complaint. The notification to the complaining provider includes:

(A) a description of the corrective actions, if any, required of the MCO in order to resolve the complaint; and

(B) if applicable, a conclusion regarding the amount of reimbursement owed to an out-of-network provider.

(4) If HHSC determines through investigation that an MCO did not reimburse an out-of-network provider based on a reasonable reimbursement methodology as described in subsection (f) ~~[(e)]~~ of this section, HHSC initiates a corrective action plan. Refer to subsection (j) ~~[(i)]~~ of this section for information about the contents of the corrective action plan.

(5) If, after an investigation, HHSC determines that additional reimbursement is owed to an out-of-network provider, the MCO must:

(A) pay the additional reimbursement owed to the out-of-network provider within 90 days from the date the complaint was received by HHSC or 30 days from the date the clean claim, or information required that makes the claim clean, is received by the MCO, whichever comes first; or

(B) submit a reimbursement payment plan to the out-of-network provider within 90 days from the date the complaint was received by HHSC. The reimbursement payment plan provided by the MCO must provide for the entire amount of the additional reimbursement to be paid within 120 days from the date the complaint was received by HHSC.

(6) If the MCO does not pay the entire amount of the additional reimbursement within 90 days from the date the complaint was received by HHSC, HHSC may require the MCO to pay interest on the unpaid amount. If required by HHSC, interest accrues at a rate of 18 percent simple interest per year on the unpaid amount from the 90th day after the date the complaint was received by HHSC, until the date the entire amount of the additional reimbursement is paid.

(7) HHSC pursues any appropriate remedy authorized in the contract between the MCO and HHSC if the MCO fails to comply with a corrective action plan under subsection (j) ~~[(i)]~~ of this section.

(j) ~~[(i)]~~ Corrective action plan.

(1) HHSC requires a corrective action plan in the following situations:

(A) the MCO exceeds a maximum standard established by HHSC for out-of-network access to health care services and dental services described in subsection (h) [(g)] of this section; or

(B) the MCO does not reimburse an out-of-network provider based on a reasonable reimbursement methodology as described in subsection (f) [(e)] of this section.

(2) A corrective action plan imposed by HHSC requires one of the following:

(A) reimbursements by the MCO to out-of-network providers at rates that equal the allowable rates for the health care services as determined under §32.028 and §32.0281, Texas Human Resources Code, for all health care services provided during the period:

(i) the MCO is not in compliance with a utilization standard established by HHSC; or

(ii) the MCO is not reimbursing out-of-network providers based on a reasonable reimbursement methodology, as described in subsection (f) [(e)] of this section;

(B) initiation of an immediate freeze by HHSC on the enrollment of additional recipients in the MCO's managed care plan until HHSC determines that the provider network under the managed care plan can adequately meet the needs of the additional recipients;

(C) education by the MCO of members enrolled in the MCO regarding the proper use of the MCO's provider network; or

(D) any other actions HHSC determines are necessary to ensure that Medicaid recipients enrolled in managed care plans provided by the MCO have access to appropriate health care services or dental services, and that providers are properly reimbursed by the MCO for providing medically necessary health care services or dental services to those recipients.

(k) [(j)] Application to Pharmacy Providers. The requirements of this section do not apply to providers of outpatient pharmacy benefits, except as noted in §353.913 of this chapter [(relating to Managed Care Organization Requirements Concerning Out-of-Network Outpatient Pharmacy Services)].

§353.7. Coordination of Benefits with Primary Health Insurance Coverage.

(a) A health care MCO must allow a member age 20 or younger, who at the time of the member's enrollment into the health care MCO has complex medical needs and has and maintains health-care coverage under a primary health benefit plan, to remain under the care of a Medicaid enrolled specialty provider with which the member is receiving care through the primary health benefit plan, even if the specialty provider is an out-of-network provider.

(b) For the purpose of this section "primary health benefit plan" has the meaning assigned by Texas Human Resources Code, §32.0422(a) but does not include a Medicaid plan.

(c) For the purpose of this section "complex medical needs" means a member receiving:

(1) Level 1 Service Coordination as authorized in the STAR Kids managed care contract; or

(2) Service Management as authorized in the STAR Health managed care contract.

(d) For the purpose of this section "specialty provider" means one of the following provider types:

(1) a physician licensed under the Texas Occupations Code, Chapter 155, who has and maintains a specialty in:

(A) Adolescent Medicine (Teenagers);

(B) Allergist (Allergies);

(C) Ambulatory Medicine (General Non-Emergency Care);

(D) Cardiology, Cardiovascular (Heart, Blood Vessels);

(E) Colon/Rectal (Bowels);

(F) Dermatology (Skin);

(G) Endocrinology (Glands);

(H) Family Medicine (General Family Medical Care);

(I) Gastroenterology (Stomach, Digestion);

(J) Genetics (Inherited Diseases, Birth Defects);

(K) Hematology (Blood);

(L) Hepatology (Liver);

(M) Immunology (Immune System);

(N) Infectious Diseases (Viral/Bacterial Infections);

(O) Internal Medicine (General Medical Care);

(P) Neonatology/Perinatology (Fetus and Newborns);

(Q) Nephrology (Kidney);

(R) Neurology (Brain, Nervous System);

(S) Neurosurgery (Operations of the Brain, Spinal Cord);

(T) Nuclear Medicine (Testing, e.g., MRI, CAT scan);

(U) Obstetrics/Gynecology (Pregnancy, Women's Health);

(V) Occupational Medicine (Work-Related Injuries);

(W) Oncology (Cancer);

(X) Ophthalmology (Eyes);

(Y) Oral-Maxillofacial Surgery (Jaw and Mouth);

(Z) Orthopedics (Bones and Joints);

(AA) Otolaryngology (Ear, Nose, and Throat);

(BB) Otology (Ears);

(CC) Pediatrician (Babies, Children);

(DD) Perinatology (Fetus);

(EE) Physical Medicine (Rehabilitation);

(FF) Plastic Surgery (Corrective Surgery);

(GG) Psychiatry (Mental Illness);

(HH) Pulmonology (Lungs, Breathing);

(II) Radiology (X-Rays);

(JJ) Reproductive Endocrinology (Reproductive System Diseases);

(KK) Rheumatologist (Joints, Muscles, Tendons);

(LL) Sports Medicine (Sports Injuries);

(MM) Surgery (Operations);

- (NN) Thoracic Surgery (Chest Surgery);
- (OO) Urology (Urinary Tract); or
- (PP) Vascular Surgery (Operations of the Blood Ves-

sels);

(2) an audiologist, as that term is defined in Texas Occupations Code, §401.001(1-a), licensed under the Texas Occupations Code, Chapter 401;

(3) a chiropractor that holds a license issued by the board created under the Texas Occupations Code, Chapter 201;

(4) a dietitian licensed under the Texas Occupations Code, Chapter 701;

(5) an optometrist licensed under the Texas Occupations Code, Chapter 351; or

(6) a podiatrist licensed under the Texas Occupations Code, Chapter 202.

(e) A health care MCO must comply with the reasonable reimbursement methodology for authorized services performed by out-of-network providers as described in §353.4(f)(2) of this chapter (relating to Managed Care Organization Requirements Concerning Out-of-Network Providers) until:

(1) an alternate reimbursement agreement is reached with the member's specialty provider;

(2) the member is no longer enrolled in a primary health benefit plan;

(3) the member or the member's LAR agree to select an alternate specialty provider; or

(4) the member is no longer enrolled in the health care MCO.

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 February 1, 2021.

TRD-202100430

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 14, 2021

For further information, please call: (512) 221-6857



CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 22. SUBSTANCE USE DISORDER TREATMENT SERVICES

1 TAC §354.1311, §354.1312

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments

to §354.1311, concerning Benefits and Limitations, and to §354.1312, concerning Conditions for Participation.

BACKGROUND AND PURPOSE

The proposed amendments update rules for Substance Abuse Dependency and Treatment Services and are necessary to comply with the Mental Health Parity and Addiction Equity Act of 2008 and the Centers for Medicare & Medicaid Services (CMS) Medicaid and CHIP Mental Health Parity Final Rule issued March 2016, related to mental health parity requirements for Medicaid and CHIP managed care organizations. The final CMS Medicaid/CHIP parity rule requires that quantitative treatment limits (limits on scope or duration) for mental health and substance use disorder (SUD) benefits cannot be more restrictive than substantially all medical or surgical benefits in a classification (e.g., outpatient services.) The rule amendment at §354.1311 modernizes the title from *Substance Abuse and Dependency Treatment Services* to *Substance Use Disorder (SUD) Treatment Services*, and allows limits on outpatient counseling (both individual and group) and residential treatment for adults to be exceeded with documentation of the supporting medical necessity for continued services. Previously, only children under the age of 21 could exceed benefit limits for these services.

The proposed amendments at §354.1312 are necessary to clarify and expand the types of providers who may deliver medication assisted treatment, consistent with the Comprehensive Addiction and Recovery Act of 2016; the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act of 2018; Senate Bill 1564, 86th Legislature, Regular Session, 2019; and Medicaid SUD medical policy updates to the Texas Medicaid Provider Procedures Manual (TMPPM) that became effective January 1, 2019.

SECTION-BY-SECTION SUMMARY

The title of Chapter 354, Subchapter A, Division 22 has been updated from "Substance Abuse and Dependency Treatment Services" to "Substance Use Disorder Treatment Services", to conform with updated Medicaid medical policy.

The proposed amendment to §354.1311, Benefits and Limitations, clarifies benefit limits and prior authorization requirements. Limits on outpatient individual and group counseling and residential treatment can be exceeded with documentation of the supporting medical necessity for continued services to conform with updated Medicaid medical policy. Similarly, the term "medication assisted therapy" has been updated to "medication assisted treatment." References to outpatient and residential detoxification are updated to "withdrawal management" consistent with American Society of Addiction Medicine terminology.

The proposed amendment to §354.1312, Conditions for Participation, clarifies that HHSC, rather than the Department of State Health Services, licenses chemical dependency treatment facilities and narcotic treatment programs. The proposed amendment expands the providers who may deliver medication assisted treatment. In addition to physicians, the proposed amendment allows other qualified prescribers, as specified in the TMPPM, to provide medication assisted treatment in an office setting and clarifies that methadone for opioid use disorder may only be provided by an HHSC-licensed narcotic treatment program in compliance with federal regulations.

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 ef-

fect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed. The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$55,289 General Revenue (GR), \$97,442 Federal Funds (FF), (\$152,731 All Funds (AF)) in State Fiscal Year (SFY) 2021; \$62,079 GR, \$99,082 FF, (\$161,162 AF) in SFY 2022; \$65,557 GR, \$104,500 FF, (\$170,058 AF) in SFY 2023; \$69,176 GR, \$110,269 FF, (\$179,445 AF) in SFY 2024; and \$72,995 GR, \$116,356 FF, (\$189,350 AF) in SFY 2025.

HHSC assumes that local governments who are required to comply with the proposed rules may incur economic costs. These local governmental entities may include local mental health authorities who also hold a separate state chemical dependency treatment facility (CDTF) license and are enrolled as a Medicaid CDTF provider.

HHSC lacks sufficient data to determine the fiscal implications to costs or revenues of local governments. HHSC also anticipates provider costs will be offset by Medicaid reimbursement.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the sections 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 state employee positions;
- (3) implementation of the proposed rules will require an increase in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will expand the existing rules;
- (7) the proposed rules will increase the number of individuals subject the rules; and,
- (8) HHSC has insufficient information to determine the proposed rules' effect on the state's economy.

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

Trey Wood has determined that there could be an adverse economic effect on small businesses, micro-businesses, or rural communities. HHSC lacks sufficient data to determine the number of or fiscal impact on small businesses, micro-businesses, or rural communities required to comply with the proposed rule.

No alternative methods were considered because the rule changes are necessary to ensure compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008, and the Centers for Medicare & Medicaid Services (CMS) Medicaid and CHIP Mental Health Parity Final Rule related to mental health parity requirements for Medicaid and CHIP managed care organizations (MCOs).

LOCAL EMPLOYMENT IMPACT

HHSC lacks sufficient information to determine the impact on a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to receive a source of

federal funds or comply with federal law and are necessary to implement state legislation.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be improved access to substance use disorder treatment by allowing service limits to be exceeded with documentation of medical necessity, and by allowing additional providers to be reimbursed for medication assisted treatment in an office setting.

Trey Wood has determined that for each year of the first five years that the rules will be in effect, there could be an anticipated cost to persons required to comply with the proposed rule. The proposed rules require the documentation of medical necessity for service extensions and additional training to prescribe buprenorphine for opioid treatment. The documentation of medical necessity will help to facilitate reimbursement for services that extend beyond the benefit limitations.

Furthermore, the proposed rules enable appropriately trained physician assistants, advanced practice registered nurses, nurse anesthetists, clinical nurse specialists, and nurse midwives associated with a local governmental entity to bill for opioid treatment using buprenorphine.

HHSC lacks sufficient data to determine the fiscal impact to persons required to comply with the rule as proposed. HHSC anticipates provider costs will be offset by Medicaid reimbursement.

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 Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Laura Jourdan at (512) 462-6269, Health and Human Services Commission, Medicaid and CHIP Services, Policy and Program Development.

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code 4102, Austin, Texas 78714-9030, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HHRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, 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 by midnight on the last day of the comment period. When emailing comments, please indicate "Comments on Proposed Rule 19R017" in the subject line.

STATUTORY AUTHORITY

The amendments 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 health and human services by the health and human services system agencies; Texas Government Code 531.033, which requires the Executive Commission of HHSC to adopt rules necessary to

carry out HHSC's duties under Chapter 531 of the Texas Government Code; and Texas Human Resources Code 32.021 which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and to adopt rules necessary for the proper and efficient operation of the medical assistance program.

The amendments affect Texas Government Code 531.0055.

§354.1311. *Benefits and Limitations.*

(a) Subject to the specifications, conditions, limitations, and requirements established by the Health and Human Services Commission (HHSC) or its designee, substance use disorder [abuse and dependency] treatment services are those services provided by a provider or facility licensed by the HHSC [Department of State Health Services] to provide substance use disorder [abuse and dependency] treatment services.

(b) Substance use disorder [abuse and dependency] has the definition assigned in the most current American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

(c) Covered outpatient substance use disorder [abuse and dependency] treatment services [shall] include:

(1) assessment;

~~(2) outpatient detoxification;~~

~~(2) [(3)] outpatient group and [;] individual [; and family] counseling; [and]~~

~~(3) [(4)] medication assisted treatment; and [therapy]~~

~~(4) outpatient withdrawal management.~~

(d) Covered outpatient substance use disorder [abuse and dependency] treatment services are [shall be] limited as follows.

(1) One [Assessment shall be limited to one] assessment per episode of care [unless medically indicated], which must be performed at the start of each new episode of care.

(2) A [Outpatient group counseling services shall be limited to a] maximum of 135 sessions [hours] per person, per calendar year for outpatient group counseling services [unless medically indicated]. Additional services beyond this limit may be considered with documentation of the supporting medical necessity for continued treatment services. Using their best judgement, a provider determines the length of time that constitutes a group session depending on the group members, the focus of the session, and other relevant variables.

(3) A maximum of 26 hours per person, per calendar year of outpatient individual counseling services. Additional services beyond this limit may be considered with documentation of the supporting medical necessity for continued treatment services.

(4) [(3)] Medication assisted treatment [therapy] duration is determined on an individual basis, based on the person's unique needs and treatment goals. Medication assisted treatment is the use of Food and Drug Administration-approved medications in combination with psychosocial treatment to treat substance use disorders, particularly alcohol and opioid use disorders, in compliance with 42 Code of Federal Regulations Part 8. Medication Assisted Treatment for Opioid Use Disorders, and applicable state rules. [shall be limited to a medically appropriate duration of treatment. In the treatment of opioid addiction, treatment must comply with federal regulations codified at 42 Code of Federal Regulations Part 8-Certification of Opioid Treatment Programs, for coverage.]

(5) Outpatient withdrawal management is limited to an appropriate duration of service based on medical necessity and level of

intoxication for a maximum of 21 days per episode of care. There are no limits on the number of episodes of care.

(e) Covered residential substance use disorder [abuse and dependency] treatment services include:

(1) residential withdrawal management [detoxification]; and

(2) residential treatment.

(f) Covered residential substance use disorder [abuse and dependency] treatment services are billed on an outpatient claim form and are [shall be] limited as follows.

(1) Residential withdrawal management [detoxification] is [shall be] limited to an [a medically] appropriate duration of service based on medical necessity [need] and level of intoxication for a maximum of 21 days per episode of care. There are no limits on the number of episodes of care.

(2) Residential treatment is [shall be] limited to an [a medically] appropriate duration of service based on medical necessity [need] and severity of substance use disorder [addiction] for a maximum of 35 days per episode of care and no more than [then] two [2] episodes of care per rolling six month [a 6-month] period, and four episodes per rolling 12 month period. Additional episodes within the six-month or 12-month time frame may be considered with documentation of medical necessity.

§354.1312. *Conditions for Participation.*

Subject to the specifications, conditions, limitations, and requirements established by the Health and Human Services Commission (HHSC) or its designee, a substance use disorder [abuse and dependency] treatment provider [facility] must meet the following requirements:

(1) Be [be] a facility that is licensed by HHSC [the Department of State Health Services (DSHS)], the state licensure authority, as a [substance abuse and] chemical dependency treatment facility. [;]

(2) For medication assisted treatment, be an HHSC-licensed chemical dependency treatment facility, an HHSC-licensed narcotic treatment program, or an appropriately trained physician or other qualified prescriber.

(A) Medication assisted treatment using methadone for opioid use disorder may only be provided by an HHSC-licensed narcotic treatment program in compliance with 42 Code of Federal Regulations Part 8 Medication Assisted Treatment for Opioid Use Disorders.

(B) Appropriately trained physicians, and other qualified prescribers, as specified in the Texas Medicaid Provider Procedures Manual, may also provide medication assisted treatment using medications other than methadone. To prescribe buprenorphine for the treatment of opioid use disorder, these prescribers must meet additional federal prescribing requirements, including a waiver to prescribe or dispense buprenorphine under the Drug Addiction Treatment Act of 2000 (DATA 2000).

(3) [(2)] Provide [provide], at a minimum, the standard services required by HHSC [DSHS] for licensure, [(as determined by the type of substance use disorder [abuse and dependency] services [service(s)] it provides. [;]

(4) [(3)] Comply [comply] with all applicable federal, state, and local laws and regulations. [;]

(5) [(4)] Be [be] enrolled and approved for participation in the Texas Medicaid [Medical Assistance] Program. [;]

(6) [(5)] Sign [sign] a written provider agreement with HHSC or its designee. By signing the agreement, the treatment

provider [substance abuse and dependency treatment facility] agrees to comply with the terms of the agreement and all requirements of the Texas Medicaid [Medical Assistance] Program, including regulations, rules, handbooks, standards, and guidelines published by HHSC or its designee. [; and]

(7) [(6)] Bill [bill] for services covered by the Texas Medicaid [Medical Assistance] Program in the manner and format prescribed by HHSC or its designee.

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

Filed with the Office of the Secretary of State on February 1, 2021.

TRD-202100439

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 14, 2021

For further information, please call: (512) 462-6269



CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 31. AMBULANCE SERVICES

1 TAC §355.8600

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8600, concerning Reimbursement Methodology for Ambulance Services.

BACKGROUND AND PURPOSE

The purpose of the proposal is to establish enhanced supplemental payments to publicly owned ground emergency ambulance service providers. Publicly owned ground emergency ambulance providers currently receive fee-for-service payments and supplemental payments to cover uncompensated care costs. Subject to approval by the Centers for Medicare and Medicaid Services, the proposed amendment will make publicly-owned ground emergency ambulance providers eligible for additional payments for services up to the average rate payable by commercial insurers for those services.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8600(a) replaces "title" with "chapter" when describing the location of §355.101.

A new term "average commercial rate" is defined in subsection (b)(2) and the terms are arranged into alphabetical order. Paragraphs in subsection (b) are renumbered to reflect the new term and alphabetization. A reference is deleted in (b)(4) and replaced with new language describing the unit of government that funds ambulance services.

Clarifying terms are added to subsection (c)(2) and (c)(2)(A). New subparagraph (B) provides the eligibility requirements for the enhanced supplemental payments program. The subparagraphs in (c)(2) are relabeled to account for the addition. Clarifying language is added throughout subsection (c)(2)(C). In sub-

paragraph (D)(iii), a reference title is updated. New subparagraph (E) provides information on the calculations for the enhanced supplemental payment program.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there will be additional revenues to state government of \$9,555,148 in Federal Funds (FF) (\$14,976,721 All Funds (AF)) for State Fiscal Year (SFY) 2021, \$9,309,894 FF (\$15,142,963 AF) for SFY 2022, \$9,408,640 FF (\$15,311,050 AF) for SFY 2023, \$9,513,076 FF (\$15,481,003 AF) for SFY 2024, and \$9,618,671 FF (\$15,652,842 AF) for SFY 2025. An estimated \$29,159,150 in intergovernmental transfers from local governmental entities to HHSC will provide the federal match.

There could be a fiscal impact on local government. Participation in the ambulance supplemental payment program is voluntary, so local governments may experience a fiscal impact if they provide intergovernmental transfers for the non-federal share of ambulance supplemental payments to participating providers.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood, HHSC Chief Financial Officer, has also determined that there is no adverse economic impact on small businesses, micro-businesses, and rural communities required to comply with the rule as proposed. There is no requirement for publicly-owned ambulance services or rural communities to alter business practices. The proposed rule also does not apply to small businesses or micro-businesses.

LOCAL EMPLOYMENT IMPACT

There are no anticipated costs to persons who are required to comply with the rule as proposed.

There is no anticipated negative impact on a local economy or on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to receive a source of federal funds or comply with federal law and does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public benefit will be improved access to care by providing opportunities for additional payments to governmental ground ambulance service providers.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because there are no additional fees or costs imposed on those required to comply. Participation is voluntary.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Mr. Hank Morris in HHSC Provider Finance at (512) 424-6772.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) 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 21R029" in the subject line.

STATUTORY AUTHORITY

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

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

§355.8600. *Reimbursement Methodology for Ambulance Services.*

(a) Authority. Payments are made to private and governmental providers of ground and air ambulance services as specified in the ambulance program rules in Chapter 354, Subchapter A, Division 9 of this title (relating to Ambulance Services). The reimbursement determination authority is specified in §355.101 of this ~~chapter~~ (relating to Introduction).

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

(1) Allowable costs--Expenses that are reasonable and necessary for the normal conduct of operations relating to the provision of ground and air ambulance services.

(2) Average Commercial Rate--The average amount payable by commercial payers for the same service.

(3) ~~[(2)]~~ Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(4) ~~[(3)]~~ Governmental ambulance provider--An ambulance provider that uses paid government employees to provide ambulance services. The ambulance services must be directly funded by a unit of government that has taxing authority or has direct access to tax revenues [as defined in 42 CFR §433.50(a)(1)(i)], such as a local government, hospital authority, hospital district, city, county, or state. A private ambulance provider under contract with a governmental entity to provide ambulance services is not considered a governmental ambulance provider for the purposes of this section.

(5) ~~[(4)]~~ Medicaid shortfall--The unreimbursed cost to an ambulance provider of providing Medicaid ambulance services to Medicaid clients.

(6) ~~[(5)]~~ Private ambulance provider--An ambulance provider that uses paid employees associated and financed through a private entity to provide ambulance services and may be under contract with a local, state, or federal government.

~~[(6) Unit of service--A unit of service is based on one or more allowable ambulance services provided to a client by all modes of approved transportation.~~

(7) Uncompensated care costs--The sum of the Medicaid shortfall and the uninsured costs.

(8) Uninsured costs--The unreimbursed cost to an ambulance provider of providing ambulance services that meet the definition of "medical assistance" in Social Security Act §1905(a) [~~§1905(a) of the Social Security Act~~] to uninsured patients as defined by CMS.

(9) Unit of service--A unit of service based on one or more allowable ambulance services provided to a client by all modes of approved transportation.

(c) Reimbursement methodologies.

(1) Fee-for-service ambulance fee. Fee-for-service reimbursement is based on the lesser of a provider's billed charges or the maximum fee established by the Texas Health and Human Services Commission (HHSC). HHSC establishes fees by reviewing the Medicare fee schedule and analyzing any other available ambulance-related data. Fee-for-service rates apply to both private and governmental ambulance providers.

(2) Supplemental payment and enhanced supplemental payment for governmental ambulance providers. For services provided through September 30, 2019, a governmental ambulance provider may be eligible to receive a supplemental payment in addition to the fee-for-service payment described in paragraph (1) of this subsection. For services provided beginning October 1, 2019, eligibility for governmental ambulance providers to receive a supplemental payment, and the methodology for calculating the payment amount, are described in §355.8210 of this ~~subchapter~~ (relating to Waiver

Payments to Governmental Ambulance Providers for Uncompensated Charity Care).

(A) Eligibility for supplemental payments. A governmental ambulance provider must submit a written request for determination of eligibility for supplemental payment in a manner designated by [regular mail or special mail delivery to the] HHSC [Rate Analysis Department]. If eligible, a governmental ambulance provider may begin to claim uncompensated care costs related to services provided on or after the first day of the month after the request for determination of eligibility is approved. HHSC only considers requests for determination of eligibility from governmental ambulance providers as defined in subsection (b) of this section. HHSC will respond to all written requests for consideration, indicating the requestor's eligibility to receive supplemental payments. An acceptable request must include:

- (i) an overview of the governmental agency;
- (ii) a complete organizational chart of the governmental agency;
- (iii) a complete organizational chart of the ambulance department within the governmental agency providing ambulance services;
- (iv) an identification of the specific geographic service area covered by the ambulance department, by ZIP code;
- (v) copies of all job descriptions for staff types or job categories of staff who work for the ambulance department and an estimated percentage of time spent working for the ambulance department and [for] other departments of the governmental agency;
- (vi) a primary contact person for the governmental agency who can respond to questions about the ambulance department; and
- (vii) a signed letter documenting the governmental ambulance provider's voluntary contribution of non-federal funds.

(B) Eligibility for enhanced supplemental payments. A governmental ambulance provider must submit an application for enhanced supplemental payments to HHSC using a form designated by HHSC that includes the cost and payment data for paid Medicaid and commercial claims for all procedure codes specified in the application. If HHSC approves the application, a governmental ambulance provider may begin to claim enhanced supplemental payments based on the average commercial rate related only to ground ambulance services reimbursed by Texas Medicaid on a fee-for-service basis provided on or after the first day of the month after the application is approved. HHSC will respond to all applications, indicating approval or disapproval of the applicant's eligibility to receive enhanced supplemental payments. An acceptable application must include:

- (i) proof of enrollment as a Medicaid provider in the State of Texas at the beginning of the current demonstration year as defined in §355.8210 of this subchapter;
- (ii) a primary contact person for the government agency who can respond to questions about the ambulance department;
- (iii) a statement from the provider expressing its intent to participate in the program; and
- (iv) a cost report that includes the cost and payment data for paid Medicaid and commercial claims for all procedure codes specified by HHSC.

(C) [(B)] Cost reports. Governmental ambulance providers that are eligible for supplemental or enhanced supplementen-

tal payments must submit an annual cost report for ground and air ambulance services delivered to Medicaid and, effective March 1, 2012, uninsured clients on a cost report form specified by HHSC. Providers certify through the cost report process their total actual federal and non-federal costs and expenditures for the cost reporting period. Cost reports must be completed for a full year based on the federal fiscal year. HHSC may require newly eligible providers to submit a partial-year cost report for their first year of eligibility. The beginning date for the partial-year cost report is the provider's first day of eligibility for supplemental or enhanced supplemental payments as determined by HHSC. The ending date of the partial-year cost report is the last day of the federal fiscal year that encompasses the cost report beginning date.

(i) Due date. The cost report is due on or before March 31 of the year following the cost reporting period ending date and must be certified in a manner specified by HHSC. If March 31 falls on a federal or state holiday or weekend, the due date is the first business [working] day after March 31. A provider may request in writing, by regular mail or special mail delivery, an extension of up to 30 days after the due date to submit a cost report. HHSC will respond to all written requests for extensions, indicating whether the extension is granted. HHSC must receive a request for extension before the cost report due date. A request for extension received after the due date is considered denied. A provider whose cost report is not received by the due date or the extended due date is ineligible for supplemental or enhanced supplemental payments for the federal fiscal year.

(ii) Purpose. A cost report documents the provider's actual allowable Medicaid and uncompensated care costs for delivering ambulance services in accordance with the applicable state and federal regulations. Because the cost report is used to determine supplemental and enhanced supplemental payments, a provider must submit a complete and acceptable cost report to be eligible for a supplemental or enhanced supplemental payment.

(iii) Allocating allowable costs. A provider's total allowable reported costs for ambulance services are allocated to Medicaid and uninsured patients based on the ratio of charges for Medicaid and uninsured patients to the charges for all patients. Only allowable expenditures related to Medicaid, Medicaid managed care, and uncompensated care as defined and approved in the Texas Healthcare Transformation and Quality Improvement 1115 Waiver Program (1115 Waiver) will be included for supplemental payment.

(D) [(C)] Calculation of supplemental payment.

(i) For services provided from October 1, 2011, through February 29, 2012, a governmental ambulance provider may be eligible to receive a supplemental payment equal to its Medicaid shortfall for the cost reporting period multiplied by the federal Medical assistance percentage (FMAP) in effect during the cost reporting period.

(ii) For services provided on or after March 1, 2012, and subject to approval by CMS, a governmental ambulance provider may be eligible to receive a supplemental payment equal to its uncompensated care costs for the cost reporting period multiplied by the FMAP in effect during the cost reporting period.

(iii) Supplemental payments based on uncompensated care costs are limited by the maximum aggregate amount of the estimated uncompensated care costs for all eligible governmental ambulance providers as determined by §355.8201 of this chapter (relating to Waiver Payments to Hospitals for Uncompensated Care).

(iv) If the actual aggregate uncompensated care costs for all eligible governmental ambulance providers is greater than

the maximum aggregate amount of the estimated uncompensated care costs for all eligible governmental ambulance providers as described in clause (iii) of this subparagraph, then HHSC will reduce the supplemental payments for all participating governmental ambulance providers proportionately.

(v) The supplemental payment is contingent upon the governmental ambulance provider's certificate of public expenditures submitted with each cost report.

(vi) If the federal government disallows federal financial participation related to the receipt or use of supplemental payments under this section, HHSC will recoup an amount equal to the federal share of supplemental payments overpaid or disallowed.

(E) Enhanced supplemental payment.

(i) For ground services reimbursed on a fee-for-service basis provided on or after October 1, 2019, a governmental ambulance provider may be eligible to receive an enhanced supplemental payment equal to the difference between the average commercial rate and the sum of its reimbursed costs for the cost reporting period.

(I) HHSC will determine the paid Medicaid claims fees and enhanced supplemental payment amounts for all procedure codes specified in the application for each eligible publicly owned fee-for-service ground emergency ambulance service provider.

(II) HHSC will calculate an overall average commercial rate for the ambulance service providers based on the cost and payment data provided from each eligible ambulance provider.

(III) HHSC will apply the overall average commercial rate to an ambulance provider's total Medicaid utilization to determine the ambulance provider's total commercial reimbursement.

(IV) HHSC will subtract the ambulance provider's total Medicaid reimbursement from the ambulance provider's total commercial reimbursement calculated for each of the eligible services.

(V) HHSC will calculate each ambulance provider's maximum payment limit by summing each of the differences calculated in subclause (IV) of this clause for each of the provider's eligible services.

(VI) HHSC will re-determine the average commercial rate at least every 3 years.

(VII) The enhanced supplemental payment is contingent upon the governmental ambulance provider's data submitted with each cost report. HHSC will determine payment amounts on a quarterly basis, with a reimbursement of up to 100 percent for each ambulance provider's average commercial rate.

(ii) If CMS disallows federal financial participation related to a provider's receipt or use of enhanced supplemental payments under this section, HHSC will recoup from the provider an amount equal to the disallowance. If HHSC identifies an overpayment to a provider related to the receipt or use of enhanced supplemental payments under this section, HHSC will recoup from the provider an amount equal to the overpayment.

(d) General information. In addition to the requirements of this section, cost reporting guidelines are governed by: §355.101 of this chapter; §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs); §355.104 of this chapter (relating to Revenues); §355.105 of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this chapter (relating to Basic Ob-

jectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this chapter (relating to Notification of Exclusions and Adjustments); §355.108 of this chapter (relating to Determination of Inflation Indices); §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); and §355.110 of this chapter (relating to Informal Reviews and Formal Appeals). If conflicts arise between this section and other sections governing cost reporting, the provisions of this section prevail.

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 February 1, 2021.

TRD-202100431

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 14, 2021

For further information, please call: (512) 424-6772



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATIONS

16 TAC §33.3

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes amended §33.3, Process to Apply for License or Permit. The proposed amendment would require that all applications for renewal of an existing license or permit be filed no earlier than 30 days prior to expiration.

Background and Summary of Basis for the Proposed Amendment

The proposed amendment brings the timeline for filing all renewal applications for permits in line with licenses (in §61.48 of the Code) and private clubs (in §32.04(c) of the Code). There is no logical or statutory basis for treating the permit types differently in this regard. Requiring all renewals to follow the same rule will reduce confusion and enable the agency to better plan for its application processing needs.

The amendment is proposed pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed amended rule will be in effect, it is not expected to have a significant fiscal impact upon the agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed amendment.

Rural Communities Impact Assessment

The proposed amendment will not have any material adverse fiscal or regulatory impacts on rural communities. The amended rule will apply statewide and have the same effect in rural communities as in urban communities. Likewise, the proposed amendment will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

No material fiscal implications are anticipated for small or micro-businesses due to the proposed amendment. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

Takings Impact Assessment

The proposed amendment does not affect a taking of private real property, as described by the Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Ms. Horton has determined that for each year of the first five years that the proposed amendment would be in effect, the public would benefit from more efficient application processing due to more predictable inflows of renewal applications. The amendment does not increase costs to the public.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed amendment. The analysis addresses the first five years the proposed amendment would be in effect. The proposed amendment neither creates nor eliminates a government program. The proposed amendment does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed amended rule requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed amendment is not expected to result in a significant change in fees paid to the agency. The proposed amendment creates a new regulation, but does not expand the applicability of any rules, or increase the number of individuals subject to existing rules' applicability beyond current rule requirements.

The proposed amendment is not anticipated to have any material impact on the state's overall economy.

Comments on the proposed amendment may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3498, Attention: Shana Horton, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on February 22, 2021, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. **DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY.** Interested persons should visit the TABC's public website prior to the meeting date

to receive further instructions or call Shana Horton, Rules Attorney, at (512) 487-9905.

The amendment is proposed pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The proposed amendment does not impact any other current rules or statutes.

§33.3. Process to Apply for License or Permit.

(a) This section relates to any license or permit. The purpose of this section is to clarify the pre-qualification process in subsection (b) of this section and distinguish it from the application process described in subsections (c) and (d) of this section.

(b) Before an application for a license or permit that is required to be certified under §11.37 or §61.37 of the Alcoholic Beverage Code may be filed with the commission, a pre-qualification packet must be completed. A pre-qualification packet is deemed incomplete if it does not contain all required certifications applicable to the type of license or permit sought and for the location requested, and a response to each item requested by the commission in the packet. For purposes of this section, a completed pre-qualification packet is one that contains:

(1) all required certifications signed by the city secretary, where appropriate, and the county clerk that the location for which the license or permit is sought is in a "wet" area for such license or permit and is not prohibited by charter, by ordinance, or by valid order in reference to the sale of any alcoholic beverage allowed by the license or permit;

(2) all other applicable certifications signed by the city secretary, where appropriate, and the county clerk that are in the pre-qualification packet prescribed by the commission;

(3) the required certification by the Comptroller of Public Accounts that the person submitting the packet holds, or has applied for and satisfies all legal requirements for, the issuance of a sales tax permit;

(4) proof of publication of notice of the application, if required by §11.39 and §61.38 of the Alcoholic Beverage Code; and

(5) a response to each item requested by the commission in the packet.

(c) A person or entity may file an application with the commission by submitting all forms, documents and information prescribed by the commission in accordance with the practices, policies, and standards relating to the processing of applications for licenses and permits. If a pre-qualification packet is required by subsection (b) of this section, the packet must be completed before an application is filed. The commission shall process the application to determine whether the application is in compliance with all provisions of the Alcoholic Beverage Code and rules of the commission or whether there is legal reason to deny the application. If additional documentation or information is requested and not provided within the requested period of time, the application will be considered incomplete and withdrawn.

(d) An application to renew a license or permit shall be filed with the commission no earlier than 30 days prior to its expiration date.

(e) [~~(d)~~] On completion of its processing pursuant to subsection (c) of this section, the commission shall inform the applicant that the application:

(1) has been referred to the State Office of Administrative Hearings;

(2) is granted; or

(3) is refused.

(f) [(e)] For purposes of §11.391 and §61.381 of the Alcoholic Beverage Code, a notice sign must be posted for 60 days before the date the permit or license is issued.

(g) [(f)] A notice sign is required for purposes of §11.391 and §61.381 of the Alcoholic Beverage Code unless a license or permit authorizing the on-premises consumption of alcoholic beverages has been active at the requested location any time during the 24 months immediately preceding the filing of the application. For purposes of this subsection, an application is filed on the date a completed application packet is received by the commission.

(h) [(g)] For the purposes of §61.35(e) of the Alcoholic Beverage Code, the commission will transmit to the county tax assessor 5% of the license fee collected for each issued license in that county. This transmission will occur the month following the issuance of the license.

(i) [(h)] Each applicant for an original or renewal permit or license that allows on-premises [on-premise] consumption of any alcoholic beverage shall furnish sales data or, if not available, projection of sales for the location at which the license or permit is located or will be located. The projection or sales data should include a sufficient breakdown of sales into the categories of food, alcoholic beverages, and other major categories of sales at the location.

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 28, 2021.

TRD-202100404

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: March 14, 2021

For further information, please call: (512) 487-9905



16 TAC §33.16

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new §33.16, Application Rules Applicable to 2021 Technology Transition.

Background and Summary of Basis for the Proposed Rule

On September 1, 2021, the agency will make three transitions precipitated by legislative action during the 86th Texas Legislative Session in 2019: from current fees to new fees; from the current set of licenses and permits to a more streamlined set; and from an outdated application processing system to a new, more efficient one. The commission determined that a rule is necessary to ensure an orderly transition and transparent, consistent commission action on applications filed around the time of the transition.

Proposed §33.16 specifies when applications for original and renewal licenses and permits must be filed, including a one-month moratorium on applications for original licenses and permits for the month of August 2021. It also lays out whether the current fees or fees effective starting on September 1, 2021, will apply, based on whether the application is an original or renewal, and

upon the date the original application is complete, including payment of all fees and when the existing license or permit expires, respectively. The rule expires by its own terms on November 1, 2021, when the rule is no longer necessary to complete the transitions.

The rule is proposed pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for the limited period for which it will be in effect, the proposed rule is not expected to have a significant fiscal impact upon the agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed rule.

Rural Communities Impact Assessment

The proposed rule will not have any material adverse fiscal or regulatory impacts on rural communities. The rule will apply statewide and have the same effect in rural communities as in urban communities. Likewise, the proposed rule will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

No material fiscal implications are anticipated for small or micro-businesses due to the proposed rule. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

Takings Impact Assessment

The proposed rule does not affect a taking of private real property, as described by the Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Ms. Horton has determined that for the limited period of time that the rule is in effect, the public will benefit from an orderly transition from outdated legacy technology to new, more efficient systems for the administration of alcoholic beverage licensing. The rule does not increase costs to the public.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed rule. The analysis addresses the limited period of time the rule would be in effect. The proposed rule neither creates nor eliminates a government program. The proposed rule does not require the creation of new employee positions or the elimination of existing employee positions. Deadlines in the rule are designed to regulate the flow of incoming applications during the transition period so that existing agency staff is able to process applications in a timely manner. Implementation of the proposed rule requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed rule is not expected to result in a significant change in fees paid to the agency. The proposed rule does not create new regulations, expand the applicability of any rules, or increase the number of individuals subject to existing rules' applicability beyond current rule requirements.

The proposed rule is not anticipated to have any material impact on the state's overall economy.

Comments on the proposed rule may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3498, Attention: Shana Horton, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on February 22, 2021, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 487-9905.

The rule is proposed pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The proposed rule may temporarily impact the applicability of some rules in 16 Texas Administrative Code Chapter 33, Subchapters A, D, and F and does temporarily impact §33.90(b).

§33.16. Application Rules Applicable to 2021 Technology Transition.

(a) Applications for original licenses and permits, requests for reinstatement under §33.91(g), notifications under §33.94, and applications for secondary permits described by §33.25 of this title, if received by the commission by midnight on July 31, 2021, will be subject to license and permit fees in effect on that date. An application is received only when the commission has received all required information and fees.

(b) From August 1, 2021 through August 31, 2021, no person may file and the commission shall not accept applications for original licenses and permits, requests for reinstatement under §33.91(g), any notification under §33.94, or applications for secondary permits described by §33.25 of this title.

(c) The Executive Director or their designee may authorize a filing under subsection (b) of this section during the month of August 2021 only if the applicant or license or permit holder can demonstrate that circumstances that could not have been reasonably foreseen require filing during August 2021 to comply with any statutory or rule deadline.

(d) Applications for renewals of licenses and permits with expiration dates through August 31, 2021 are subject to the fees in effect prior to September 1, 2021. Applications for renewals of licenses and permits with expiration dates of September 1, 2021 or later are subject to the fees that become effective on September 1, 2021.

(e) Applications for renewal of a license or permit with an expiration date of September 1, 2021 or later may not be filed and will not be accepted by the commission prior to September 1, 2021.

(f) The commission shall not charge the late-filing fee under §33.90(b) of this title for an application for renewal of a license or permit with an expiration date in the months of September or October, 2021, so long as the renewal application is received by the commission within the 30-day period following the expiration date.

(g) Applications under §§33.11, 33.12, and 33.15 of this title may be filed in August and will be processed as usual.

(h) This rule expires and is no longer effective at 12:01 a.m. on November 1, 2021.

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 28, 2021.

TRD-202100405

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: March 14, 2021

For further information, please call: (512) 487-9905

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TITLE 19. EDUCATION

**PART 1. TEXAS HIGHER EDUCATION
COORDINATING BOARD**

**CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS**

19 TAC §1.6

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter A, §1.6, concerning advisory committees and subcommittees.

The proposed amendment to Rule 1.6(i) clarifies that reimbursement of advisory committee members will be in compliance with Texas Government Code, Chapter 2110. This brings the rule in alignment with the Texas Government Code §2110.004, which limits reimbursement of advisory committee members more narrowly than current rule.

The proposed addition of new Rule 1.6(o) clarifies that if a more specific rule applies to an advisory committee or subcommittee, the more specific rule governs. Rule 1.6 is intended to provide general or default provisions governing an advisory committee or subcommittee of an advisory committee. However, in some cases, one of the rules in Title 19, Part 1, Chapter 1, Subchapters F-EE (except Subchapter AA), contains different and varied provisions governing each specific advisory committee or subcommittee. This new provision is intended to reconcile any confusion about whether the general provisions of Rule 1.6 or the specific provisions of that advisory committee rule apply.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the section is in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue

to the state or to local governments as a result of enforcing or administering the rule.

Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be greater clarity regarding the purpose and duties of advisory committees and subcommittees. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Government Growth Impact Statement

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

Comments on the proposal may be submitted to Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, RuleComments@higher-ed.texas.gov Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, Section 61.026 and Texas Government Code, Chapter 2110, which provide the Coordinating Board with the authority to appoint advisory committees.

The proposed amendments affect all rules in Title 19, Part 1, Chapter 1 that establish or govern the composition, purpose, and duties of advisory committees appointed to make recommendations to the Coordinating Board, including Title 19, Part 1, Chapter 1, Subchapters F-EE, except Subchapter AA.

§1.6. Advisory Committees.

- (a) The Board may appoint advisory committees from outside the Board's membership to advise the Board as it may deem necessary.
- (b) The use of advisory committees by the Board shall be in compliance with the provisions of Texas Government Code, Chapter 2110 regarding the composition and duration of committees, the reimbursement of committee member's expenses, the evaluation of committees, and the reporting to the Legislative Budget Board.
- (c) An advisory committee is automatically abolished on the fourth anniversary of the date of its creation unless it has a specific duration prescribed by statute or the Board reestablishes the committee. A written statement shall be prepared by the Commissioner or his or her designee for each advisory committee setting forth the purpose of the committee, the task of the committee, the manner in which the committee will report to the Board, the date on which the committee is created, and the date on which the committee will automatically be abolished. The written statements shall be maintained on file in the Board offices.

(d) Purpose and Duties of Advisory Committees. The purpose of an advisory committee shall be to give the Board the benefit of the members' collective technical expertise and experience with respect to matters within the Board's jurisdiction. An advisory committee's sole duty is to advise the Board. An advisory committee has no executive or administrative powers or duties with respect to the operation of the Board, and all such powers and duties rest solely with the Board. The specific purposes and tasks of an advisory committee subject to this subchapter shall be identified in Board rules.

(e) Composition of Advisory Committees.

(1) The composition of advisory committees created by the Board, including subcommittees or workgroups with non-advisory committee members, shall contain no more than 24 members in compliance with the requirements of Texas Government Code, Chapter 2110.

(2) The Board shall make reasonable attempts to provide balanced, geographic representation, consonant with Texas Government Code, Chapter 2110, on all advisory committees. A rule or other action may not be challenged because of the composition of an advisory committee.

(3) This section does not apply to an advisory committee to the extent that:

(A) another state law specifically states that Texas Government Code, Chapter 2110 does not apply; or

(B) a federal law or regulation:

(i) imposes an unconditional requirement that irreconcilably conflicts with the requirements of Texas Government Code, Chapter 2110; or

(ii) imposes a condition on the state's eligibility to receive money from the federal government that irreconcilably conflicts with Texas Government Code, Chapter 2110.

(f) Membership Terms. Except as otherwise provided by law, advisory committee members shall serve terms as determined by the Board.

(g) Membership. The Board shall solicit nominations and make appointments from such nominations for membership on advisory committees from presidents and chancellors, or the respective designee. For advisory committees that include members not associated with an institution of higher education, the Board shall solicit nominations from appropriate entities, such as stakeholder organizations whose membership consists of the type of representative the advisory committee is seeking. Except as otherwise provided by law, all members of advisory committees are appointed by and serve at the pleasure of the Board. Board members may not serve on advisory committees. If an advisory committee member resigns, is no longer associated with the nominating institution or entity, dies, becomes incapacitated, is removed by the Board, otherwise vacates his or her position, or becomes ineligible prior to the end of his or her term, the Board may appoint a replacement who shall serve the remainder of the unexpired term.

(h) Attendance. A record of attendance at each meeting of advisory committees shall be made. Except as otherwise provided by law, if a member of an advisory committee misses three consecutive regularly scheduled meetings or more than half of all the regularly scheduled meetings in a one-year period, without approval by a majority vote of the Board, that member automatically vacates his or her position on the advisory committee and the Board may make an appointment to fill the remainder of the unexpired term of the vacancy.

(i) Reimbursement. Members of advisory committees shall not be reimbursed for expenses except as authorized by Texas Government Code chapter 2110 [unless the Board expressly authorizes reimbursement. The Board may also, in its discretion, reimburse the expenses of members of any duly authorized subcommittee of an advisory committee].

(j) Presiding Officer. Except as otherwise provided by law, each advisory committee shall select from its members a presiding officer, who shall report the committee's recommendations to the Board. The Board may, at its discretion, appoint other officers of advisory committees or allow committee members to elect other officers at their pleasure.

(k) Manner of Reporting. Advisory committees shall report any recommendations directly to the Board at a Board meeting determined in consultation with agency staff, including the Commissioner of Higher Education. Advisory committees shall also provide an annual or biennial report to the Board to allow the Board to properly evaluate the committee's work, usefulness, and the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(l) Subcommittees or Workgroups. Advisory committees may organize themselves into subcommittees or workgroups. One member of each subcommittee or workgroup shall serve as the chairperson. Subcommittee or workgroup chairs shall make written reports regarding their work to the presiding officer of the advisory committee. A subcommittee or workgroup of an advisory committee may include members who are not members of the advisory committee, but must include at least one member of the advisory committee.

(m) Meetings. Advisory committees shall meet at the call of the presiding officer or the Board. All advisory committee and subcommittee meetings shall be open to the public and broadcasted via the web, unless prevented by technical difficulties.

(n) Monitoring of Advisory Committees and Records.

(1) The Board shall monitor the activities of advisory committees.

(2) Agency staff shall record and maintain the minutes of each advisory committee and subcommittee meeting. The staff shall maintain a record of actions taken and shall distribute copies of approved minutes and other committee documents to the Board and to advisory committee members on a timely basis.

(3) Minutes kept for advisory committee meetings and reports required under subsection (k) of this section shall be maintained in a form and location that is easily accessible to the public, including making the information available on the Board's website.

(o) In the case of a conflict between this rule and a more specific rule in Title 19, Part 1, Chapter 1, governing an advisory committee or subcommittee, the more specific rule governing that committee or subcommittee shall apply.

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 February 1, 2021.

TRD-202100433

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 14, 2021

For further information, please call: (512) 427-6206

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SUBCHAPTER T. WORKFORCE EDUCATION
COURSE MANUAL ADVISORY COMMITTEE

19 TAC §1.222

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter T, §1.222, concerning the Workforce Education Course Manual Advisory Committee Membership and Officers. Specifically, this amendment will establish the terms of the committee chair and vice-chair.

This amendment will align this rule with Board Rule §1.6, which provides that the advisory committee members serve terms established by the Board. Allowing the vice-chair to automatically succeed the chair provides for greater continuity in leadership and necessitates the one-year extension of time that a person who serves as vice-chair may be on the committee.

Dr. Tina Jackson, Assistant Commissioner for Workforce Education, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local government as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Tina Jackson, Assistant Commissioner for Workforce Education, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the establishment of terms for the chair and vice-chair of the Workforce Education Course Manual Advisory Committee. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Government Growth Impact Statement

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

Comments on the proposal may be submitted to Dr. Tina Jackson, Assistant Commissioner for Workforce Education, Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at AQW@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, Chapter 61, §61.026, which provides the Coordinating Board with the authority to adopt rules regarding an advisory committee's terms of service and Texas Education Code §130.355 which authorizes the Board to adopt rules to administer Workforce Continuing Education.

The proposed amendment affects Texas Education Code, §§61.051, 61.0664 and 130.351-130.355.

§1.222. *Committee Membership and Officers.*

(a) Membership shall consist of faculty and administrators from public community, state, and technical colleges with demonstrated leadership in workforce education.

(b) Membership on the committee shall include: representatives from public community, state, and technical colleges as defined in TEC, §61.003; and

(1) one (1) ex-officio representative from the Texas Association of College Technical Educators (TACTE), nominated by the TACTE Board; and

(2) one (1) ex-officio representative from the Texas Administrators of Continuing Education (TACE), nominated by the TACE Board; and

(3) one (1) ex-officio representative from the Texas Association of College Registrars and Admissions Officers (TACRAO), nominated by the TACRAO Board.

(c) The number of committee members shall not exceed twenty-four (24).

(d) Members of the committee shall select the chair and vice-chair who will each serve two-year terms. The vice-chair shall succeed as the presiding chair every two years. [∴

~~{(1) the presiding officer, who will be responsible for conducting meetings and conveying committee recommendations to the Board; and }~~

~~{(2) the vice chair, who will succeed the presiding officer at the end of the presiding officer's year of service.}~~

(e) Members shall serve staggered terms of up to three years except an individual who serves first as vice-chair and then chair, who will serve a term of four years.

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

Filed with the Office of the Secretary of State on February 1, 2021.

TRD-202100434

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 14, 2021

For further information, please call: (512) 427-6209



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

SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §4.54

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter C, §4.54, concerning TSI Exemptions, Exceptions, and Waivers. Specifically, this amendment will enable students who have met the standards on the state-approved high school equivalency tests to be exempt from the Texas Success Initiative and have immediate access to college-level courses without additional demonstration of college readiness.

House Bill (HB) 1891 (86R) amended Section 51.338, Education Code by adding new subsection (h) to allow a student who has achieved a score set by the board on a high school equivalency examination administered under Texas Education Code § 7.111 to be exempt from the requirements of the Texas Success Initiative (TEC, Chapter 51, Subchapter F-1). Section 51.338(h) directs the commissioner of higher education by rule to establish the period for which an exemption under this subsection is valid. The proposed amendment to Rule §4.54 sets the scores required by Education Code Section 51.338(h) and aligns the exemption's period of validity with other assessments used for this purpose, including the SAT and ACT, which is five (5) years from date of testing.

The proposed amendment includes the college readiness scores for both the GED and HiSET, the two assessment instruments approved by the State Board of Education to be used under Education Code Section 7.111. Researchers from GED and HiSET established the proposed scores through college readiness standard setting processes using psychometric and other industry-based protocols, as described in their respective technical manuals:

1. GED: https://ged.com/wp-content/uploads/GED_Technical_Manual.pdf
2. HiSET: https://hiset.ets.org/s/pdf/hiset_technical_manual.pdf

THECB staff reviewed these processes and determined they align sufficiently with readiness expectations for meeting the purpose of a TSI exemption. THECB will conduct a follow-up study to review the scores once a large enough sample size is established but no later than summer 2022. Revisions, if any, to these standards will be proposed upon completion of the study and based on its findings.

Jerel Booker, J.D., Assistant Commissioner for College Readiness and Success, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Jerel Booker, Assistant Commissioner for College Readiness and Success, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be that students who have met the standards on the state-approved high school equivalency tests will be exempt from the TSI and have immediate access to college-level courses without additional demonstration of college readiness. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

Comments on the proposal may be submitted to Jerel Booker, Assistant Commissioner for College Readiness and Success, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711 or via email at CRI@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 51.344, which provides the Coordinating Board with the authority to adopt rules to implement subchapter F-1: Texas Success Initiative.

The proposed amendment affects Texas Education Code, Chapter 51, Subchapter F-1; Texas Education Code §7.111; and Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter C, §4.59 Determination of Readiness to Perform Entry-Level Freshman Coursework.

§4.54. Exemptions, Exceptions, and Waivers.

(a) The following students shall be exempt from the requirements of this title, whereby exempt students shall not be required to provide any additional demonstration of college readiness and shall be allowed to enroll in any entry-level freshman course as defined in §4.53(13) of this title (relating to Definitions):

(1) For a period of five (5) years from the date of testing, a student who is tested and performs at or above the following standards that cannot be raised by institutions:

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

(C) GED: minimum score of 165 on the Mathematical Reasoning subject test shall be exempt for the mathematics section of the TSI Assessment. A minimum score of 165 on the Reasoning Through Language Arts (RLA) subject test shall be exempt for the English Language Arts Reading (ELAR) section of the TSI Assessment.

(D) HiSET: minimum score of 15 on the Mathematics subtest shall be exempt for the mathematics section of the TSI Assessment. A minimum score of 15 on the Reading subtest and a minimum

score of 15 on the Writing subtest, including a minimum score of 4 on the essay, shall be exempt for the English Language Arts Reading (ELAR) section of the TSI Assessment.

(2) - (10) (No change.)

(b) - (d) (No change.)

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

Filed with the Office of the Secretary of State on February 1, 2021.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 14, 2021

For further information, please call: (512) 427-6247



CHAPTER 6. HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS SUBCHAPTER C. TOBACCO LAWSUIT SETTLEMENT FUNDS

19 TAC §6.74

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 6, Subchapter C, §6.74, concerning the Minority Health Research and Education Grant Program. Specifically, this amendment will clarify the grant program's statutory authority, application and review processes, and procedures for award recommendations and approval. Texas Education Code, Chapter 63, Subchapter D, §63.302(d) directs the Coordinating Board to adopt rules relating to the award of grants under the permanent fund for minority health research and education. The Coordinating Board adopted initial rules in 2003. Areas indicating a lack of clarity existed in the adopted rules, particularly relating to the grant application, evaluation, and award processes. Through a negotiated rulemaking process, the Coordinating Board amends the rules to enhance clarity. Section 6.74 is amended to make clarifying and conforming stylistic revisions to the rule text and to make clear that details of the grant program will be specified in the Request for Applications. The amendments include clarification about the Board's process for reviewing grant applications.

Additionally, the rule language in Texas Administrative Code, Title 19, Part 1, Chapter 6, Subchapter C, §6.74(a)(5) is revised to align with the statutory language for the grant program, which limits eligibility to public institutions of higher education and Centers for Teacher Education. While the rule implementing the definition of eligible institutions in §63.302(c) was originally expanded to include both public and private institutions of higher education, it has been determined that rule was inconsistent with the plain text of the statute which limits grant awards to public institutions of higher education, with limited exception for Centers for Teacher Education.

Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five

years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be enhanced clarity in the administration of the Minority Health Research and Education Grant Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

Comments on the proposal may be submitted to Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email at RuleComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §§63.301 and 63.302, which creates the Permanent Fund For Minority Health Research And Education, and provides the Coordinating Board with the authority to adopt rules relating to the award of grants under the fund.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 6, Subchapter C.

§6.74. *Minority Health Research and Education Grant Program.*

(a) General Information. The program, as it applies to this section:

- (1) Name--Minority Health Research and Education Grant Program.
- (2) Purpose--To provide funding to eligible institutions of higher education to conduct research and educational programs on public health issues affecting one or more minority groups in Texas.
- (3) Authority--Texas Education Code [Texas Government Code], §§63.301 - 63.302.

(4) Minority--A particular ethnic or racial group that is under-represented in one or more areas of health research or health education.

(5) Eligible institutions--The entities identified in Texas Education Code, §63.302, as eligible to receive grants. [Public and private accredited general academic and health-related institutions, and Centers for Teacher Education, that conduct research or educational programs that address minority health issues or form partnerships with minority organizations, colleges, or universities to conduct research and educational programs that address minority health issues. Two-year institutions, including junior and community colleges, state colleges or technical colleges, and other agencies of higher education as defined by Texas Education Code, §61.003(6) are not eligible to submit an application for program funding but may receive program funding indirectly as a partner to an eligible institution.]

(6) Eligible programs--Research and educational initiatives, including those that expand existing research and degree programs, and develop other new or existing activities and projects, that are not funded by state appropriation during the funding period. Proposed programs shall not conflict with current judicial decisions and state interpretation on administering minority programs in higher education.

(7) Application requirements--Applicants shall submit applications [Applications shall be submitted] to the Board in the format and at the time specified by the Board.

(8) General Selection Criteria--Competitive. Designed to award grants that provide the best overall value to the state. Selection criteria shall be based on:

(A) Program quality as defined by the evaluation criteria in the Request for Applications (RFA) [as determined by reviewers];

(B) Potential impact [Impact the grant award shall have] on public health issues affecting one or more minority groups in the state;

(C) Cost of the proposed program; and

(D) Other factors to be considered may include [by the Board, including] financial ability to perform program, state and regional needs and priorities, whether the eligible institution has been designated as an Historically Black or Hispanic Serving institution by the U.S. Department of Education, ability to continue program after grant period, and past performance.

(9) Award amounts will be set forth in the RFA based on the availability of funds. [Minimum award--\$15,000 per award in any fiscal year.]

[(10) Maximum award--30 percent of the estimated available funding per award in any fiscal year.]

(10) [(11)] Maximum award length--A program is eligible to receive funding for up to three years within a grant period. Currently and previously [Previously] funded programs may reapply to receive funding according to eligibility requirements specified in the RFA [for one additional grant period].

(b) Review Criteria. The review criteria will be set forth in the RFA.

(1) Board staff and/or peer reviewers may evaluate the applications. [The Board shall use peer and Board staff reviewers to evaluate the quality of applications.]

(2) The Commissioner shall select qualified individuals to serve as reviewers. Reviewers shall demonstrate appropriate creden-

tials to evaluate grant applications in health research and education. Reviewers shall not evaluate any applications for which they have a conflict of interest.

(3) The Board staff shall provide written instructions and training for reviewers.

(4) The reviewers shall review [score] each application according to these evaluation criteria [award criteria and weights]:

(A) Significance and impact of research or educational program for minority health issues; [(A) Significance of research or educational program for minority health issues. The reviewers shall consider issues such as: How relevant and timely is this topic to minority public health issues? Is the program unique and important or unique and important for a geographic area? Will the program be useful to or later replicated at other institutions in the state? Will the program provide an advancement of knowledge that may result in positive changes in patient care, education or health care policy for minorities? How many people will benefit directly from the program? Maximum points: 30]

(B) Program design; [(B) Resources to perform program. The reviewers shall consider issues such as: What new personnel, equipment and facility resources are needed for the program? What existing resources can be used? Will the program draw on resources from other institutions and organizations? Do the institution's partners, if any, demonstrate financial stability and effectiveness in conducting similar research or education programs? What are the professional credentials and experience of the program's key personnel? Maximum points: 15]

(C) Resources to perform the program; [(C) Program design. The reviewers shall consider issues such as: Is the program well defined? Is it a discrete program which can be completed in the grant period? Are the goals and objectives realistic? How well has the proposal described the data collection or program development process and the nature of analysis to be carried out? Maximum points: 25]

(D) Cost effectiveness; and [(D) Cost sharing. The reviewers shall consider issues such as: What level of local funding, if any, is available to share in the cost of the program? Maximum points: 5]

(E) Evaluation and expected outcomes. [(E) Cost effectiveness. The reviewers shall consider issues such as: How appropriate are the chosen equipment, staffing and service providers for the program given the cost of the program? Is the budget realistic? Does the proposal make effective use of the grant funds? Maximum points: 25.]

[(F) Evaluation and expected outcomes. The reviewers shall consider issues such as: How well has the proposal described the methodology to evaluate and estimate the outcomes from the program? Is the evaluation methodology appropriate and effective? Are the outcomes realistic? Maximum points: 30]

[(5) Award criteria and weights may be adjusted to best fulfill the purpose of an individual grant competition, if those adjusted award criteria and weights are first included in the Request for Proposal for the grant competition.]

(c) Application and Review Process.

[(4) The Commissioner may solicit recommendations from an advisory committee or other group of qualified individuals on funding priorities for each grant period, and the administration of the application and review process.]

(1) [(2)] The Board staff shall review applications to determine if they adhere to the grant program requirements and the funding

priorities contained in the RFA [Request for Proposal]. An application must meet the requirements of the RFA [Request for Proposal] and be submitted with proper authorization on or before the deadline [before or on the day] specified by the RFA [Board] to qualify for further consideration. Qualified applications shall be forwarded to the reviewers for evaluation. Board staff shall notify an applicant if their application does not qualify based on [applicants eliminated through] the screening process no later than 30 days after the RFA deadline [within 30 days of the submission deadline].

(2) [(3)] Reviewers shall evaluate applications based on the evaluation criteria included in the RFA. [and assign scores based on award criteria. All evaluations and scores of the review committee are final.]

[(4) Board staff shall rank each application based on points assigned by reviewers, and then may request that individuals representing the most highly-ranked applications make oral presentations on their applications to the reviewers and other Board staff. The Board staff may consider reviewer comments from the oral presentations in recommending a priority ranked list of applications to the Board for approval.]

(d) Funding Decisions.

(1) Board staff and/or peer reviewers will evaluate applications for grant funding [Applications for grant funding shall be evaluated] only based upon the information provided in the written application.

(2) Board staff shall make a recommendation of selected applicants to be funded to the Commissioner, who will submit a funding decision recommendation to the Board for their final approval as consistent with Texas Administrative Code, Title 19, §1.16.

(3) [(2)] The Board shall review and may approve grants based upon the Commissioner's recommendation. [the recommendation of the panel of reviewers and Board staff. The Commissioner shall report approved grants to the Board for each biennial grant period.]

[(3) Funding recommendations to the Board shall consist of the most highly ranked and recommended applications up to the limit of available funds. If available funds are insufficient to fund a proposal after the higher-ranking and recommended applications have been funded, staff shall negotiate with the applicant to determine if a lesser amount would be acceptable. If the applicant does not agree to the lesser amount, the staff shall negotiate with the next applicant on the ranked list. The process shall be continued until all grant funds are awarded to the most highly ranked and recommended applications.]

[(e) Contract. Following approval of grant awards by the Board the successful applicants shall sign a contract issued by Board staff and based on the information contained in the application.]

[(f) Cancellation or Suspension of Grants. The Board has the right to reject all applications and cancel a grant solicitation at any point before a contract is signed.]

[(g) Request for Proposal. The full text of the administrative regulations and budget guidelines for this program are contained in the official Request for Proposal (RFP) available upon request from the Board.]

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 February 1, 2021.



CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES

SUBCHAPTER M. BLOCK SCHEDULING

19 TAC §§9.660 - 9.666

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 9, Subchapter M, §§9.660 - 9.666, concerning Program Development in Public Two-Year Colleges-Block Scheduling. Specifically, this repeal will strike out the entire Subchapter M.

House Bill 1583 (84R) amended the Education Code to require a public junior college to establish a block schedule curriculum from among certain allied health, nursing, and career and technology associate degree or certificate programs not previously offered as a block schedule curriculum by the junior college. The bill required each public junior college to publish, in advance of each semester, the available block schedule curriculum for each such associate degree or certificate program offered by the college for that semester. The Coordinating Board was required, among other duties, to adopt rules for the administration of these provisions.

Authority for Subchapter M was provided by Texas Education Code (TEC), §130.0095. The provisions of §§9.660 - 9.666 were adopted to be effective February 22, 2016, 41 TexReg 1229. Because the underlying statutory authority for Block Scheduling enacted by HB 1583 (84R) was not renewed and expired on its own terms pursuant to former TEC §130.0095(e) on August 1, 2019, the Coordinating Board proposes to repeal the rule.

Dr. Tina Jackson, Assistant Commissioner for Workforce Education, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Tina Jackson has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the repeal of rules that no longer have statutory authority. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

Comments on the proposal may be submitted to Dr. Tina Jackson, Assistant Commissioner for Workforce Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at AQW@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, §130.0095 which provided the Coordinating Board with the authority to adopt rules as necessary for the administration of block scheduling for certain associate degree or certificate programs. Rulemaking authority lapsed when §130.0095 expired on August 1, 2019.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 9, Subchapter M.

§9.660. *Purpose.*

§9.661. *Authority.*

§9.662. *Definitions.*

§9.663. *Block Scheduled Program.*

§9.664. *Adoption of Block Scheduled Programs.*

§9.665. *Block Enrollment.*

§9.666. *Demonstration of Hardship.*

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

Filed with the Office of the Secretary of State on February 1, 2021.



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1011

The Texas Education Agency (TEA) proposes an amendment to §61.1011, concerning the formula transition grant. The proposed amendment would modify the rule to clarify average daily attendance (ADA) calculations to include those related to the ADA hold harmless provisions for the 2019-2020 and 2020-2021 school years.

BACKGROUND INFORMATION AND JUSTIFICATION: House Bill 3, 86th Texas Legislature, 2019, enacted Texas Education Code, §48.277, Formula Transition Grant, which created an additional entitlement through the Foundation School Program for school districts that did not exceed certain thresholds related to funding under the law as it existed on January 1, 2019.

The proposed amendment to §61.1011 would update subsection (c)(4) to include additional provisions for calculating the ADA of a school district or open-enrollment charter school.

The proposed amendment would add language relative to the 2019-2020 and 2020-2021 school years and provide for consideration of the ADA hold harmless provisions adopted in response to the COVID-19 pandemic for those particular school years.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by allowing consideration of the ADA hold harmless provisions adopted in response to the COVID-19 pandemic for the 2019-2020 and 2020-2021 school years.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be expanding provisions for ADA funding in the 2019-2020 and 2020-2021 school years. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins February 12, 2021, and ends March 15, 2021. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 12, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §48.004, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which specifies that the commissioner of education shall adopt rules that are necessary to implement and administer the Foundation School Program; and TEC, §48.277, as added by HB 3, 86th Texas Legislature, 2019, which details the calculation of the formula transition grant for school districts and open-enrollment charter schools. This grant is provided to eligible school districts and open-enrollment charter schools on the basis of a comparison of funding under HB 3 and funding under prior law.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.004 and §48.277.

§61.1011. Formula Transition Grant.

(a) General provisions. This section implements Texas Education Code (TEC), §48.277 (Formula Transition Grant), which provides for additional funding for school districts with new funding levels that did not exceed certain thresholds as a result of the passage of House Bill (HB) 3, 86th Texas Legislature, 2019. In accordance with TEC, §48.277, this section defines the data sources that Texas Education Agency (TEA) will use in calculating the prior law funding available to school districts.

(b) Definitions. The following terms have the following meanings when used in this section.

(1) Average daily attendance (ADA)--Average daily attendance as defined by TEC, §48.005(a).

(2) Foundation School Program (FSP)--The program established under TEC, Chapters 46, 48, and 49, or any successor program of state-appropriated funding for school districts in this state.

(3) Local maintenance and operations (M&O) tax collections--The amount of local M&O taxes collected by a school district.

(4) Maintenance and operations revenue--The total M&O revenue available to a school district for maintenance and operations under the FSP, including state aid and M&O tax collections net of any required recapture payments.

(5) Public Education Information Management System (PEIMS)--The system that encompasses all data requested and received by TEA about public education, also known as the Texas Student Data System (TSDS) or TSDS PEIMS.

(c) Data sources for calculating M&O revenue under TEC, Chapters 41 and 42, as those chapters existed on January 1, 2019.

(1) M&O tax rate. TEA will use a district's tax year 2018 adopted M&O tax rate, minus any pennies of tax effort adopted in response to a disaster under Texas Tax Code, §26.08(a-1).

(2) M&O tax collections. For the 2019-2020 and 2020-2021 school years, the M&O tax collections under prior law are equal to the product of:

(A) the quotient of:

(i) the actual M&O tax collections for the school year submitted to TEA for FSP purposes; and

(ii) the actual adopted M&O tax rate for the school year; and

(B) the adopted M&O tax rate for the 2018 tax year.

(3) Total tax levy. For purposes of calculating a district's support of students enrolled in the Texas School for the Blind and Visually Impaired and Texas School for the Deaf under TEC, §30.003, TEA will calculate the total tax levy by adding the district's interest and sinking (I&S) tax collections to the M&O tax collections calculated in paragraph (2) of this subsection.

(4) Average daily attendance. In calculating the ADA of a school district under former TEC, §42.005, TEA will exclude any attendance submitted to TEA under TEC, §48.0051 (Incentive for Additional Instructional Days), and: [-]

(A) for the 2019-2020 school year, the calculation of ADA of a school district under former TEC, §42.005, will include adjustments related to the ADA hold harmless provided for that school year but will exclude any reduction in ADA arising from the application of the Elementary and Secondary School Emergency Relief funding toward the ADA hold harmless; and

(B) for the 2020-2021 school year, the calculation of ADA of a school district under former TEC, §42.005, will include adjustments related to the ADA hold harmless provided for that school year.

(5) State compensatory education full-time equivalent (FTE) student counts. To calculate the number of students eligible for the compensatory education allotment under former TEC, §42.152, TEA will continue to average the best six months number of students eligible for enrollment in the National School Lunch Program from the preceding federal fiscal year submitted to TEA from the Texas Department of Agriculture. Districts that used alternative reporting of these students through the FSP will be able to continue to submit alternative reporting data through the FSP system for purposes of calculating prior law revenue under the formula transition grant.

(6) Career and technical education (CTE) FTE student counts. To calculate the number of student FTEs eligible for the career and technology education allotment under former TEC, §42.153, TEA will use CTE FTEs submitted to TEA in the summer PEIMS submission for each year and exclude any CTE FTEs in Grade 7 or 8 that were authorized for FSP funding starting with the 2019-2020 school year under TEC, §48.106 (Career and Technology Education Allotment). TEA will also exclude any new CTE funding related to Pathways in Technology Early College High School (P-TECH) schools and the New Tech Network.

(7) Bilingual education. To calculate the bilingual education allotment under former TEC, §42.153, TEA will use data submitted to PEIMS for students with limited English proficiency in bilingual or special language programs under TEC, Chapter 29, Subchapter B (Bilingual Education and Special Language Programs).

(8) High school allotment. To calculate the high school allotment under former TEC, §42.260, TEA will continue to use PEIMS ADA for students in Grades 9-12.

(9) Staff salary allotment. To calculate the additional state aid for staff salary increases under former TEC, §42.2513, TEA will use the numbers of full-time and part-time employees other than administrators or employees subject to the minimum salary schedule submitted to TEA through the FSP system for the 2018-2019 school year.

(10) Additional state aid for homestead exemption. To calculate the additional state aid for homestead exemption under former TEC, §42.2518, TEA will use the values calculated for districts for the 2018-2019 school year.

(11) Guaranteed yield. To calculate the guaranteed yield allotment under former TEC, §42.302(a-1)(1), TEA will use the amounts per student in weighted average daily attendance (WADA) per penny of tax effort established in the General Appropriations Act, Rider 3, Article III, 86th Texas Legislature, 2019, of \$126.88 for the 2019-2020 school year and \$135.92 for the 2020-2021 school year.

(12) Chapter 41 status. For purposes of determining a district's status under former TEC, Chapter 41, TEA will calculate districts' recapture costs under the law as it existed on January 1, 2019, by assuming all districts with a final wealth per WADA in excess of the equalized wealth level(s) were notified of the requirement to pay recapture and that all districts would have exercised the option to purchase ADA credits under former TEC, Chapter 41, Subchapter D. TEA will further assume that all affected districts would have qualified for the early agreement credit as it existed under former TEC, §41.098.

(13) School district entitlement for certain students. TEA will exclude calculations of state aid under former TEC, §42.2511, and TEC, §48.252 (School District Entitlement for Certain Students) in calculations for the formula transition grant.

(14) Limitation on old law calculations.

(A) TEA will stop running prior law calculations for the 2019-2020 school year after June 30, 2021, and the amounts that a district would have received for the 2019-2020 school year under TEC, §48.277(a) and (d-1), will not be changed after that date.

(B) TEA will stop running prior law calculations for the 2020-2021 school year after June 30, 2022, and the amounts that a district would have received for the 2020-2021 school year under TEC, §48.277(a) and (d-1), will not be changed after that date.

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 February 1, 2021.

TRD-202100429

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 14, 2021

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

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TITLE 22. EXAMINING BOARDS

**PART 22. TEXAS STATE BOARD OF
PUBLIC ACCOUNTANCY**

CHAPTER 515. LICENSES

22 TAC §515.8

On January 14, 2021, the Texas State Board of Public Accountancy filed proposed amendments to 22 TAC §515.8 for publication in the January 29, 2021, issue of the Texas Register. Due to an error by the Texas Register, the text of the amendments appeared in the online Texas Register database but not the in print or online HTML and PDF versions of the January 29, 2021, issue. Due to the error, the proposal is being reprinted in the February 12, 2021, issue.

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.8, concerning Retired or Disability Status.

Background, Justification and Summary

Board Rule 515.8 currently provides for applying for retirement status with a form. The proposed revision provides for an electronic application.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will clarify the process for applying for retirement status.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a

new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 1, 2021.

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

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.8. Retired or Disability Status.

(a) Retired status. A licensee who is at least 60 years old and has affirmed [~~filed a request on a form prescribed by the board stating~~] that the licensee [~~he~~] has no association with accounting may be granted retired status at the time of license renewal. A licensee in retired status is exempt from the fingerprinting required in §515.1(d) of this chapter (relating to License). A licensee who has been granted retired status and who reenters the workforce in a position that has an association with accounting automatically loses the retired status except as provided for in subsection (a)(1) of this section, and must provide the fingerprinting required in §515.1(d) of this chapter unless previously submitted to the board.

(1) A licensee who serves without compensation on a Board of Directors, or Board of Trustees, or provides volunteer tax preparation services, participates in a government sponsored business mentoring program such as the Internal Revenue Service's Volunteer Income Tax Assistance (VITA) program or the Small Business Administration's SCORE program or participates in an advisory role for a similar charitable, civic or other non-profit organization continues to be eligible for retired status.

(2) Licensees providing such uncompensated volunteer services have the responsibility to maintain professional competence relative to the volunteer services they provide even though exempted from CPE requirements.

(3) The board shall require licensees to affirm in writing their understanding of the limited types of activities in which they may engage while in retired status and their understanding that they have a professional duty to ensure that they hold the professional competencies necessary to offer these limited volunteer services.

(4) Licensees may only convert to retired status if they hold a license in good standing and not be subject to any sanction or disciplinary action.

(5) Compensated services do not include routine reimbursement for travel costs and meals associated with the volunteer services or de minimis per diem amounts paid to cover such expenses.

(6) A retired licensee shall place the word "retired" adjacent to the retired licensee's [his] CPA or Public Accountant title on any business card, letterhead or any other document. A licensee may be held responsible for a third party incorrectly repeating the CPA's title and shall make reasonable efforts to assure that the word "retired" is used in conjunction with CPA. Any of these terms must not be applied in such a manner that could likely confuse the public as to the current status of the licensee. The licensee will not be required to have a certificate issued with the word "retired" on the certificate.

(7) A licensee in "retired" status is not required:

(A) to maintain CPE; and

(B) provide fingerprinting in accordance with §515.1(d) of this chapter unless the retired status is removed.

(8) A retired licensee shall not offer or render professional services that requires the retired licensee's [his] signature and use of the CPA title either with or without "retired" attached, except a retired licensee providing supervision of an applicant to take the UCPAE may sign the work experience form.

(9) Upon reentry into the workforce, the licensee must notify the board and request a new license renewal notice and:

(A) pay the license fee established by the board for the period since the licensee [he] became employed;

(B) complete a new license renewal notice; and

(C) meet the CPE requirements for the period since the licensee [he] was granted the retired status as required by §523.113(3) of this title (relating to Exemptions from CPE).

(b) Disability status. Disability status may be granted to an individual who submits to the board a statement and an affidavit from the licensee's physician which identifies the disability and states that the individual is unable to work because of a severe ongoing physical or mental impairment or medical condition that is not likely to improve within the next 12 consecutive months. This status may be granted only at the time of license renewal.

(1) Disability status is immediately revoked upon:

(A) the CPA reentering the workforce in a position that has an association with accounting work for which the CPA [he] receives compensation; or

(B) the CPA serving on a Board of Directors, Board of Trustees, or in a similar governance position unless the service is for a charity, civic, or similar non-profit organization.

(2) Upon reentry into the workforce under such conditions, the individual must notify the board and request a new license renewal notice and:

(A) pay the license fee established by the board for the period since the individual [he] became employed;

(B) complete a new license renewal notice;

(C) meet the CPE requirements for the period pursuant to §523.113(3) of this title; and

(D) provide the fingerprinting required in §515.1(d) of this chapter unless previously submitted.

(c) For purposes of this section the term "association with accounting" shall include the following:

(1) working or providing oversight of accounting or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; accounting information systems; treasury, finance, or audit; or

(2) representing to the public, including an employer, that the individual is a CPA or public accountant in connection with the sale of any services or products involving accounting services or work, as provided for in §501.52(22) of this title (relating to Definitions) including such designation on a business card, letterhead, proxy statement, promotional brochure, advertisement, or office; or

(3) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management services; or

(4) providing instruction in accounting courses; or

(5) for purposes of making a determination as to whether the individual fits one of the categories listed in this section the questions shall be resolved in favor of including the work as an "association with accounting."

(d) Nothing herein shall be construed to limit the board's disciplinary authority with regard to a license in retired or disabled status. All board rules and all provisions of the Act apply to an individual in retired or disability status.

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 14, 2021.

TRD-202100219

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: February 28, 2021

For further information, please call: (512) 305-7842



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL

The Texas Department of Insurance (TDI) proposes to amend 28 TAC Subchapter E, §§34.511, 34.512, and 34.516; Subchapter F, §34.611; Subchapter G, §34.711; and Subchapter H, §34.811, concerning fire protection pocket licenses and firework retail permit distribution channels.

EXPLANATION. Current TDI rules require fire protection licensees to carry a pocket license with them to show proof of licensure while engaged in business activities. The proposed amendments would remove those requirements so that licensees could instead show proof of licensure on a mobile device. A licensee may still provide proof with a paper document. These changes will allow the State Fire Marshal's Office to implement its charge to safeguard lives and property through the regulation of fire alarms, fire extinguishers, fire sprinklers, and fireworks, while making proof of licensure requirements easier for license holders to satisfy. The proposed amendments would also remove language from current rules relating to an obsolete license type.

The amendments to Subchapters E, F, G, and H: (1) implement Insurance Code Chapters 6001, 6002, and 6003, and Occupations Code Chapter 2154; (2) clarify the intent of the regulations and efficiently administer the respective statutes; (3) protect, safeguard, and preserve lives and property; and (4) provide for the safety of the public, regulated persons, and regulated persons' customers.

Descriptions of the proposed amendments follow.

Section 34.511. Fire Extinguisher Licenses. Amendments to §34.511(b) update the catchline and change the requirement that a licensee carry a pocket license to say that a licensee must be able to show proof of licensure while engaged in business activities.

Section 34.512. Apprentice Permit. Amendments to §34.512(a) update the catchline and change the requirement that a permit holder carry a pocket license to say that the permit holder must be able to show proof of licensure while engaging in the business.

Section 34.516. Tests. The proposal deletes §34.516(a)(5), which relates to Type R licenses, because this license is no longer issued. Type R licenses were eliminated by amendments published in the August 23, 2019, edition of the *Texas Register* at 44 TexReg 4481.

Section 34.611. Licenses and Approvals. Amendments to §34.611(b) update the catchline and change the requirement that a licensee carry a pocket license to say that the licensee must be able to show proof of licensure while engaged in business activities.

Section 34.711. Responsible Managing Employee (RME) License. Amendments to §34.711(b) update the catchline and change the requirement that a licensee carry a pocket license to say that the licensee must be able to show proof of licensure while engaged in activities of a responsible managing employee.

Section 34.811. Requirements, Pyrotechnic Operator License, Pyrotechnic Special Effects Operator License, and Flame Effects Operator License. The proposal amends §34.811(i) to change the requirement that a licensee carry a pocket license to say that a licensee must be able to show proof of licensure while engaged in activities of the business.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Natalie Robertson, director, State Fire Marshal's Office,

has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections. Ms. Robertson made this determination because the proposed amendments do not add to or decrease state revenues or expenditures.

Ms. Robertson does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Robertson expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Insurance Code Chapters 6001, 6002, and 6003, and Occupations Code Chapter 2154, allowing the State Fire Marshal's Office personnel to more efficiently administer related regulations. The proposed amendments will give license holders more flexibility to provide proof of licensure and clarify the rules by eliminating references to an obsolete license type.

Ms. Robertson expects that the proposed amendments will not increase the cost of compliance with Insurance Code Chapters 6001, 6002, and 6003, or Occupations Code Chapter 2154 because the amendments provide flexibility and reduce regulatory burden.

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. The proposed amendments will give license holders more flexibility and reduce regulatory burden. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that the proposed amendments do not impose a possible cost on regulated persons. The proposed amendments will give license holders more flexibility and reduce regulatory burden.

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 repeal, limit, or expand 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 March 15, 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 March 15, 2021. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

SUBCHAPTER E. FIRE EXTINGUISHER RULES

28 TAC §§34.511, 34.512, 34.516

STATUTORY AUTHORITY. TDI proposes amendments to 28 TAC §§34.511, 34.512, and 34.516 under Insurance Code §§6001.051(b), 6001.052, and 36.001.

Insurance Code §6001.051(b) specifies that the Commissioner may issue rules the Commissioner considers necessary to administer Chapter 6001 through the state fire marshal.

Insurance Code §6001.052(b) specifies that the Commissioner adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding (1) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (2) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (3) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the Commissioner by rule prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 34.511, 34.512, and 34.516 implement Insurance Code §6001.051 and §6001.052.

§34.511. *Fire Extinguisher Licenses.*

(a) Types of licenses. Each license must be identified by type, which indicates the business activity authorized under the license.

(1) Type PL--For planning, supervising, certifying, installing, or servicing of all fixed systems other than pre-engineered systems. A system planning licensee may also perform, supervise, or certify the installation or servicing of all pre-engineered fixed systems and portable fire extinguishers.

(2) Type A--For certifying or servicing the installation of all fixed fire extinguisher systems, other than pre-engineered systems; or for installing, certifying, or servicing all pre-engineered fixed fire

extinguisher systems, and certifying and servicing of portable extinguishers.

(3) Type B--For servicing, certifying, and low-pressure hydrostatic testing of portables.

(4) Type K--For installing, certifying, or servicing pre-engineered fixed fire extinguisher systems for the protection of cooking areas, and certifying and servicing portable extinguishers.

(b) Proof of licensure. [~~Pocket license.~~] A licensee must be able to show proof of licensure [~~carry a pocket license for identification~~] while engaged in the activities of the business.

(c) Duplicate license. A duplicate license must be obtained from the state fire marshal to replace a lost or destroyed license. The license holder or registered firm must submit written notification of the loss or destruction, accompanied by the required fee.

(d) Revised license. The change of a licensee's registered firm or mailing address requires a revised license. Within 14 days after the change requiring the revision, the license holder or registered firm must submit written notification of the necessary change, accompanied by the required fee.

(e) Restrictions.

(1) A licensee must not engage in any act of the business unless employed by a registered firm and holding an unexpired license.

(2) A license is neither temporarily nor permanently transferable from one person to another.

(3) A registered firm must notify the state fire marshal within 14 days after termination of employment of a licensee.

(4) A Type A or Type K license will not be issued to an individual unless the individual has held an apprentice permit or a Type B license for at least six months or has held a license to service fixed extinguisher systems for at least six months from another state.

§34.512. *Apprentice Permit.*

(a) Proof of licensure. [~~Pocket permit.~~] A permit holder must be able to show proof of licensure [~~carry a pocket permit for identification~~] while engaging in the business.

(b) Duplicate permit. A duplicate permit must be obtained from the state fire marshal to replace a lost or destroyed permit. The permit holder and his employer must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(c) Revised permits. The change of a permittee's employer, home address, or mailing address requires a revised permit. Within 14 days after the change requiring the revision, the permit holder or registered firm must submit written notification to the State Fire Marshal's Office of the necessary change, accompanied by the required fee.

(d) Nontransferable. A permit is neither temporarily nor permanently transferable from one person to another.

(e) Apprentice. An individual holding a current apprentice permit may, under the direct supervision of the licensee, assist in all respective services of the licensee; however, the licensee must sign all documents requiring the licensee's signature.

§34.516. *Tests.*

(a) Applicants for licenses are required to take a test and obtain a grade of at least 70 percent on the test. Tests may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability. The test content, frequency, location, and outsource testing service must be designated by the state fire marshal.

(1) The Type B license test will include questions on the following:

- and
- (A) this subchapter and Insurance Code Chapter 6001;
 - (B) installing and servicing of portables.

(2) The Type A license test will include questions on the following:

- (A) this subchapter and Insurance Code Chapter 6001;
- (B) installing and servicing of portables;
- (C) fixed systems; and
- (D) installing and servicing pre-engineered fixed fire extinguisher systems for the protection of cooking areas.

(3) The Type K license test will include questions on the following:

- (A) this subchapter and Insurance Code Chapter 6001;
- (B) installing and servicing of portables; and
- (C) installing and servicing pre-engineered fixed fire extinguisher systems for the protection of cooking areas.

(4) The Type PL license test will include questions on the following:

- (A) this subchapter and Insurance Code Chapter 6001; and
- (B) a technically qualifying test to be conducted through NICET.

~~{(5) The Type R license test will include questions on this subchapter and Insurance Code Chapter 6001.}~~

(b) The standards used in the tests will be adopted by the State Fire Marshal's Office.

(c) Examinees who fail any topic on the test must file a retest application accompanied by the required fee.

(d) A person whose license has been expired for two years or longer who makes application for a new license must take and pass another test. No test is required for a licensee whose license is renewed within two years of expiration.

(e) An examinee who is scheduled for a test to be conducted on a religious holy day by the State Fire Marshal's Office and who wishes to observe the religious holy day may request the rescheduling of the test to an alternate date.

(f) An applicant may only schedule each type of test three times within a twelve-month period.

(g) An applicant for a license must complete and submit all application requirements within one year of the successful completion of any test required for a license, except for testing conducted through NICET; otherwise, the test is voided and the individual will have to pass the test again.

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 28, 2021.

TRD-202100397

James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: March 14, 2021
For further information, please call: (512) 676-6587



SUBCHAPTER F. FIRE ALARM RULES

28 TAC §34.611

STATUTORY AUTHORITY. TDI proposes amendments to 28 TAC §34.611 under Insurance Code §§6002.051(b), 6002.052(b), and 36.001.

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 34.611 implements Insurance Code §6002.051 and §6002.052.

§34.611. *Licenses and Approvals.*

(a) Types of licenses and approvals. The following licenses and approvals are issued by the State Fire Marshal's Office according to Insurance Code Chapter 6002 and this subchapter. As required by Insurance Code Chapter 6002, an individual or entity must be licensed or approved to lawfully perform the functions for which the license or approval is issued.

(1) Fire alarm technician license--For installing, inspecting, servicing, testing, maintaining, monitoring, and certifying fire alarm or fire detection devices and systems.

(2) Fire alarm monitoring technician license--For the monitoring of fire alarm or fire detection devices and systems.

(3) Instructor approval--For providing training at an approved training school in installing, certifying, inspecting, and servicing fire alarm or detection systems in single-family or two-family residences. single- or two-family residences.

(4) Residential fire alarm superintendent single station license--For planning, installing, certifying, inspecting, testing, servicing, and maintaining single station smoke or heat detectors which are not a part of or connected to any other detection device or system in single-family or two-family residences..

(5) Residential fire alarm superintendent license--For planning, installing, certifying, inspecting, testing, servicing, monitoring, and maintaining fire alarm or fire detection devices and systems in single-family or two-family residences. A residential fire alarm superintendent may act as a fire alarm technician.

(6) Fire alarm planning superintendent license--For planning, installing, certifying, inspecting, testing, servicing, monitoring, and maintaining fire alarm or fire detection devices.

(7) Residential fire alarm technician license--For installing, certifying, inspecting, and servicing, but not planning, fire alarm or fire detection devices and systems in single-family or two-family residences.

(8) Training school approval--For conducting required training necessary for obtaining a residential fire alarm technician license.

(b) Proof of [Pocket] license and approval.

(1) A licensee must be able to show proof of licensure [~~carry a pocket license for identification~~] while engaged in the activities of the business.

(2) An instructor must carry the instructor's approval while providing training in an approved training school on the installing, certifying, inspecting, and servicing of fire alarm or detection systems in single-family or two-family residences.

(c) Duplicate license. A duplicate license must be obtained from the state fire marshal to replace a lost or destroyed license. The license holder or registered firm must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(d) Licensee responsibilities relating to revised licenses. A change in the licensee's name, the licensee's mailing address, or a new or additional registered firm employing the licensee requires a revised license. Within 14 days after the change requiring the revision, the license holder must submit written notification of the necessary change, accompanied by the required fee.

(e) Registered firms' responsibilities relating to licensees. A registered firm must submit notification of any licensee employment, termination, or resignation within 14 days of its occurrence.

(f) Restrictions on licensees and registered firms.

(1) A licensee must not engage in any act of the business unless employed by or as an agent of a registered firm and holding an unexpired license.

(2) Each person who engages in the activities of the business must have the appropriate license issued by the state fire marshal unless excepted from the licensing provisions by Insurance Code §6002.155.

(g) Restrictions on approval holders. Approvals are not transferable.

(h) Responsibilities relating to revised approvals. A change in an instructor's name or mailing address requires a revised approval. The change in the mailing address of a fire alarm training school requires a revised approval. Within 14 days after the change requiring the revision, the approval holder must submit written notification of the necessary change, accompanied by the required fee.

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 28, 2021.

TRD-202100398

James Person
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6587



SUBCHAPTER G. FIRE SPRINKLER RULES

28 TAC §34.711

STATUTORY AUTHORITY. TDI proposes amendments to 28 TAC §34.711 under Insurance Code §§6003.051(b), 6003.054(a), and 36.001.

Insurance Code §6003.051(b) specifies that the Commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal.

Section 6003.054(a) specifies that the state fire marshal must implement the rules adopted by the Commissioner for the protection and preservation of life and property in controlling (1) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (2) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

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 34.711 implements Insurance Code §§6003.051, 6003.052, and 6003.054.

§34.711. *Responsible Managing Employee (RME) License.*

(a) Required. Each person designated as a responsible managing employee by a registered firm must have a license issued by the state fire marshal.

(b) Proof of licensure. [~~Pocket License.~~] An RME must be able to show proof of licensure [~~carry a pocket license for identification~~] while engaged in the activities of an RME.

(c) Duplicate License. An RME must obtain a duplicate license from the state fire marshal to replace a lost or destroyed license. The license holder must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(d) Revised Licenses. The change of licensee's employer, home address, or mailing address requires a revised license. The license holder must submit written notification of the necessary change within 14 days of the change, accompanied by the required fee.

(e) Restrictions.

(1) A licensee must not engage in any act of the business unless employed by a registered firm and holding an unexpired license.

(2) A registered firm must notify the state fire marshal within 14 days after termination of employment of an RME.

(3) A license is neither temporarily nor permanently transferable from one person to another.

(f) Types.

(1) RME-General--A license issued to an individual who is designated by a registered firm to ensure that any fire protection sprinkler system, as planned, installed, maintained, or serviced, meets the standards provided by law.

(2) RME-Dwelling--A license issued to an individual who is designated by a registered firm to ensure that the fire protection sprinkler system for a one- and two-family dwelling, as planned, installed, maintained, or serviced, meets the standards provided by law.

(3) RME-Underground Fire Main--A license issued to an individual who is designated by a registered firm to ensure that the underground fire main for a fire protection sprinkler system, as installed, maintained, or serviced, meets the standards provided by law.

(4) RME-General Inspector--A license issued to an individual who is designated by a registered firm to perform the inspection, test, and maintenance service for a fire protection sprinkler system according to the standards adopted in this subchapter.

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 28, 2021.

TRD-202100399
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: March 14, 2021
For further information, please call: (512) 676-6587



SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

28 TAC §34.811

STATUTORY AUTHORITY. TDI proposes amendments to 28 TAC §34.811 under Occupations Code §2154.051 and §2154.052 and Insurance Code §36.001.

Occupations Code §2154.051 authorizes the Commissioner to determine reasonable criteria and qualifications for licenses.

Occupations Code §2154.052 provides that the Commissioner adopt, and the state fire marshal must administer, rules the Commissioner considers necessary for the protection, safety, and preservation of life and property.

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 34.811 implements Occupations Code §2154.051 and §2154.052.

§34.811. *Requirements, Pyrotechnic Operator License, Pyrotechnic Special Effects Operator License, and Flame Effects Operator License.*

(a) Applicants for a pyrotechnic operator license, pyrotechnic special effects operator license, or flame effects operator license must take a written test and obtain at least a passing grade of 70 percent. Written tests may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability. The content, frequency, and location of the tests must be designated by the state fire marshal.

(b) Examinees who fail may file a retest application, accompanied by the required fee.

(c) An applicant may only schedule each type of test three times within a twelve-month period.

(d) An applicant for a license must complete and submit all application requirements within one year of the successful completion of any test required for a license; otherwise, the test is voided and the individual will have to pass the test again.

(e) The state fire marshal may waive a test requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

(f) A licensee whose license has been expired for two years or longer and makes application for a new license must pass another test.

(g) A pyrotechnic operator license will not be issued to any person who fails to meet the requirements of subsection (a) of this section and the following:

(1) assisted in conducting at least five permitted or licensed public displays in Texas under the direct supervision of and verified in writing by a pyrotechnic operator licensed in Texas; and

(2) be at least 21 years of age.

(h) The application must be accompanied by a criminal history report from the Texas Department of Public Safety.

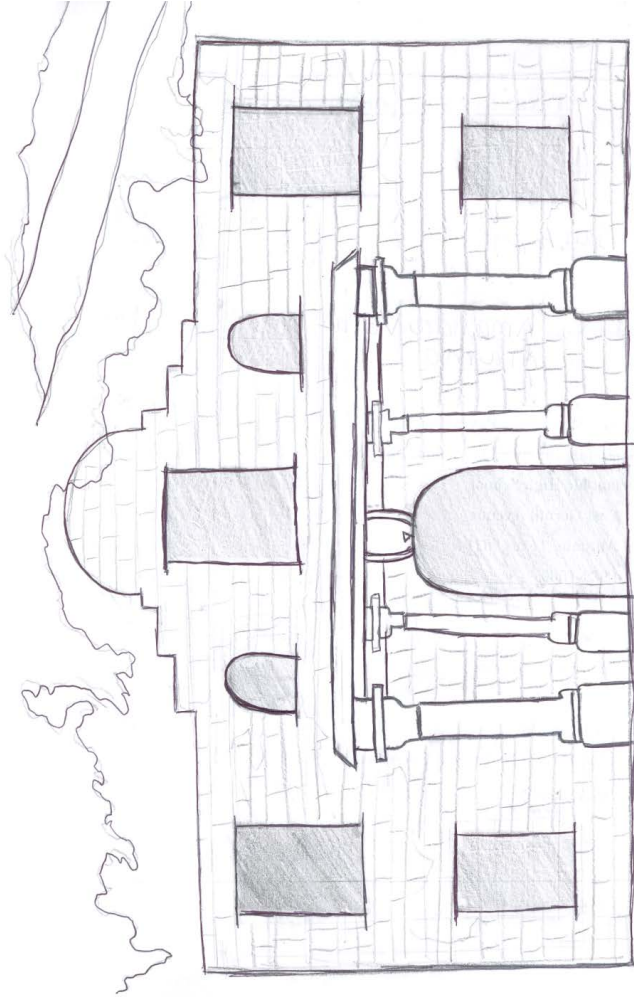
(i) A licensee must be able to show proof of licensure while [The pocket license document issued along with the regular license document is for identification purposes only and must be carried by the licensee when] engaged in the activities of the business.

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 28, 2021.

TRD-202100400
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: March 14, 2021
For further information, please call: (512) 676-6587





WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATIONS

16 TAC §33.5

The Texas Alcoholic Beverage Commission withdraws the proposed amendment of §33.5, which appeared in the January 15, 2021, issue of the *Texas Register* (46 TexReg 421).

Filed with the Office of the Secretary of State on January 28, 2021.

TRD-202100401

Shana Horton

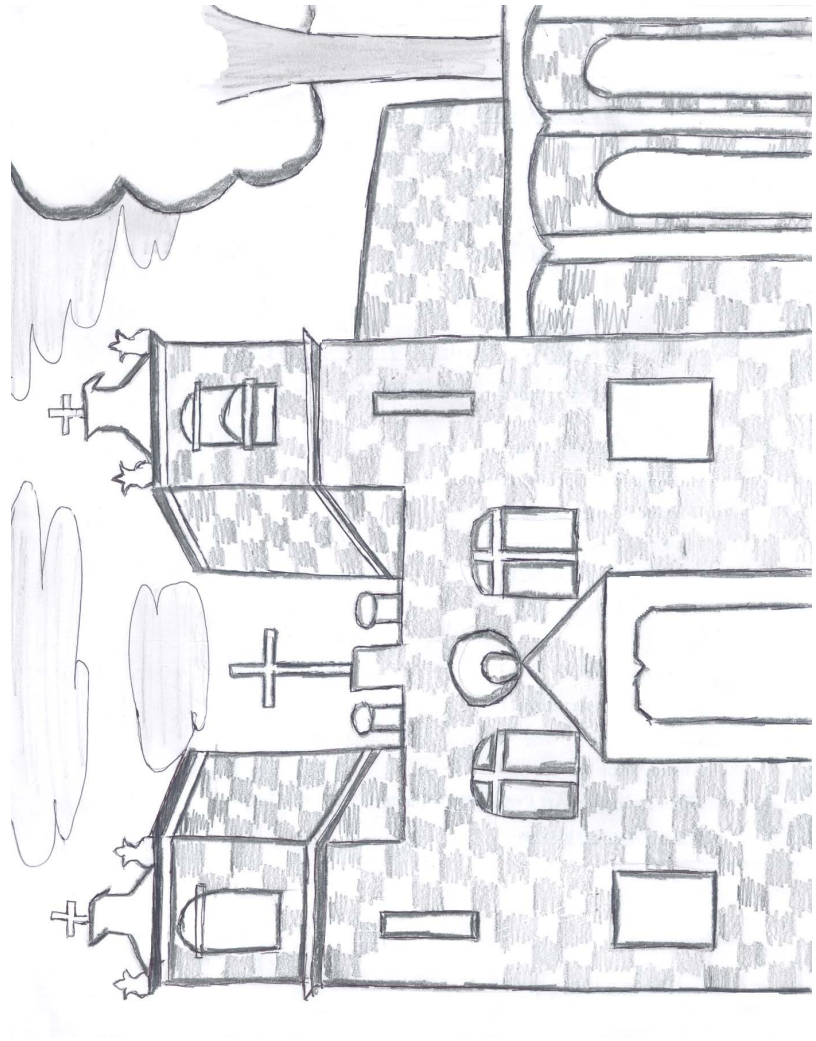
Rules Attorney

Texas Alcoholic Beverage Commission

Effective date: January 28, 2021

For further information, please call: (512) 487-9905





ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 1. MEDICAID PROCEDURES FOR PROVIDERS

1 TAC §354.1003

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §354.1003, concerning Time Limits for Submitted Claims. The amendment to §354.1003 is adopted without changes to the proposed text as published in the October 16, 2020 issue of the *Texas Register* (45 TexReg 7353). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

Under §354.1003, most Medicaid providers must submit claims to the Medicaid claims administrator within 95 days from the date of service or the claims will be denied for late filing. Additionally, providers must adhere to claims filing and appeal deadlines and all claims, including all appeals processes, must be finalized within 24 months of the date of service. On occasion, circumstances either partially or wholly beyond the providers' control result in claims being finalized outside of this 24-month timeliness requirement. This amendment adds an exception to the rule that allows HHSC to consider such situations as exceptions to the provider 24-month time limit for filing claims if the provider shows good cause and to the extent permitted by state and federal law.

COMMENTS

The 31-day comment period ended November 16, 2020.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which directs the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize

HHSC to administer the federal medical assistance (Medicaid) program.

The 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 29, 2021.

TRD-202100408

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: February 18, 2021

Proposal publication date: October 16, 2020

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



CHAPTER 393. INFORMAL DISPUTE RESOLUTION AND INFORMAL RECONSIDERATION

1 TAC §§393.1 - 393.3

The Texas Health and Human Services Commission (HHSC) adopts amendments to §393.1, concerning Informal Dispute Resolution for Nursing Facilities and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID); §393.2, concerning Informal Dispute Resolution for Assisted Living Facilities; and new §393.3 concerning Informal Dispute Resolution for Texas Home Living and Home and Community-based Service providers.

The amendment to §393.2 is adopted without changes to the proposed text as published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8437). The rule will not be republished.

The amendment to §393.1 and new §393.3 are adopted with changes to the proposed text as published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8437). These rules will be republished.

BACKGROUND AND JUSTIFICATION

The amendment to §393.1 will comply with Senate Bill (S.B.) 304, 84th Legislature, Regular Session, 2015, which modified §531.058 Texas Government Code by requiring HHSC to contract with a disinterested non-profit organization to perform Informal Dispute Resolution (IDR) reviews for nursing facilities. To foster consistency, all three facility types IDR serves were included in the procurement. Additionally, amendments to this rule also align with House Bill (H.B.) 2025, 85th Legislature, Regular

Session, 2017, which modified Texas Health and Safety Code Chapters 242, 247, and 252. H.B. 2025 required a system to be developed to record and track the severity and scope of licensure violations for Intermediate Care Facilities (ICF/IIDs) and Assisted Living Facilities (ALFs).

The amendment to §393.2 will comply with S.B. 924, 85th Legislature, Regular Session, 2017, which modified Texas Health and Safety Code §247.051, concerning the IDR process for ALFs. This statute was modified to include the language in Texas Government Code §531.058 from S.B. 304 regarding the outsourcing of the IDR process to ensure it was also required of ALFs. Other modifications to that statute included provisions for Assisted Living Facility providers to be able to obtain documentation regarding the survey/investigation. Additionally, amendments to this rule also align with H.B. 2025.

The new §393.3 will comply with H.B. 2590, 85th Legislature, Regular Session, 2017, which modified Human Resources Code by adding a new section §161.0892. This new section directs HHSC to establish and outsource an IDR process for Texas Home Living (TxHmL) and Home and Community-based Service (HCS) providers.

COMMENTS

The 31-day comment period ended December 28, 2020.

During this period, HHSC received comments regarding the proposed rules from four commenters, including Jacobson PLLC; and combined questions from Private Providers Association of Texas (PPAT), Providers Alliance for Community Services of Texas (PACSTX), and Texas Council of Community Centers (Texas Council). A summary of comments relating to the rules and HHSC's responses follows.

Comment: A commenter requested relabeling of sections in proposed §393.1 and §393.3 to ensure that similar or identical provisions are in alignment.

Response: HHSC accepts this suggestion and will make the changes. New §393.3(h) was separated out from §393.3(g) and the following subsections relabeled accordingly.

Comment: A commenter recommended that the language from §393.2(j) regarding burden of proof be added to the corresponding sections in §393.1 and §393.3.

Response: HHSC disagrees and respectfully declines to revise the rule in response to this comment. The language in §393.2(j) was required specifically for the ALF IDR process by S.B. 924 and HHSC will not extend this provision to the ICF and TxHmL/HCS rules without specific statutory direction, to avoid conflict with federal requirements regarding those programs.

Comment: A commenter recommended that the timeline language in §393.1(d) and 393.3(d) be changed from five to seven calendar days, or otherwise changed to "business" days.

Response: HHSC disagrees and respectfully declines to revise the rule in response to this comment. The timelines stated are consistent with the current process for NF/ICF and HHSC has not noted any issues with those timelines. That amount of time allows adequate time and flexibility for both the providers and the contractor performing the reviews to ensure reviews are completed within the statutory timeframe.

Comment: A commenter recommended restoration of language deleted from §393.1(e)(6) regarding allowable methods of submitting supporting documentation.

Response: HHSC disagrees and respectfully declines to revise the rule in response to this comment. As the IDR process is contracted out, HHSC seeks to maintain flexibility in this area to meet the requirements of future contracts. HHSC will publish the acceptable methods in the IDR procedures that are provided to the facility/provider prior to submitting an IDR, and will also maintain the IDR procedures on the HHSC website.

Comment: A commenter recommended language be added to §393.1(h)(2) and §393.3(g)(2) to clarify whether the determination is made for a portion of a finding or the finding in its entirety.

Response: HHSC accepts this suggestion and has added the word 'of' to §393.1(h)(2) and §393.3(h)(2), this Section being relabeled as stated in the first response to the first comment above.

Comment: A commenter requested language be added to §393.1(p) and §393.3(o) to clarify in the rule that HHSC staff are expected to coordinate scheduling IDR conferences with the facility and the meeting can be rescheduled if the rescheduled date is "on or before the 22nd calendar day after HHSC received the IDR request."

Response: HHSC disagrees and respectfully declines to revise the rule in response to this comment. The commenter is concerned with the coordination of scheduling IDR conferences, and whether or not the providers can reschedule a conference on or before the 22nd calendar day. In current practice, the contractor works diligently with providers to ensure the conference is scheduled on a date and time suitable for both parties, and within the allowable timeframes. Rescheduling conferences is not prohibited by the rule; however, the decision to reschedule is based on a number of factors (e.g., the 22nd calendar day, the reviewer's availability, etc.).

Comment: A commenter requested removal of the language stating that "questions are strictly limited to the review in question" describing scope of questions allowed under §393.1(q) and suggested that questioning should be only limited by time, not subject. The commenter expressed concerns that this language may limit a provider's ability to ask indirect questions about the survey; for example, the experience of the surveyor, or the facts leading up to the survey.

Response: HHSC disagrees and respectfully declines to revise the rule in response to this comment. The examples provided by the commenter are issues that may be germane to the review in question and would not necessarily be excluded by operation of the rule language as drafted, which is mainly intended to exclude questions relating to either unrelated or prior surveys.

Minor edits were made to correct formatting and punctuation in §393.1(h)(3) and (4).

STATUTORY AUTHORITY

The proposed amendments and new rule are authorized by Texas Government Code §531.038(a), which provides that the HHSC Executive Commissioner by rule establish an informal dispute resolution process that must provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding of the commission under Section 32.021(d), Human Resources Code, or the Department of Aging and Disability Services or its successor agency under Chapter 242, 247, or 252, Health and Safety Code; and Texas Human Resources Code §161.0892(a) that provides that the Executive Commissioner of HHSC by rule establish an informal dispute resolution process for HCS and TxHmL waiver providers.

§393.1. *Informal Dispute Resolution for Nursing Facilities and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID).*

(a) The Texas Health and Human Services Commission (HHSC) provides an informal dispute resolution (IDR) process for nursing facilities and intermediate care facilities for individuals with an intellectual disability or related conditions (ICF/IID) (hereinafter referred to collectively as "facility") through which a facility may dispute deficiencies/violations cited against that facility by the State survey agency, or its designee.

(b) The HHSC IDR Department must receive a facility's written request for an IDR no later than the tenth calendar day after the facility's receipt of the official statement of deficiencies/violations from the State survey agency, or its designee. The facility must submit its written request for an IDR on the form designated for that purpose by HHSC. HHSC will make that form publicly available, e.g., maintained on the HHSC website.

(c) Within three business days of its receipt of the facility's written request for an IDR, HHSC will notify the facility and the State survey agency's regional office under which the facility operates of its receipt of the request.

(d) Within five calendar days of HHSC's receipt of the facility's request for an IDR, HHSC must receive from the facility the facility's rebuttal letter and attached supporting documentation. The rebuttal letter must contain:

(1) a list of the deficiencies/violations disputed (only those deficiencies/violations listed on the IDR request form and addressed in the rebuttal letter and supporting documentation will be reviewed);

(2) the reason or reasons each deficiency/violation is disputed; and

(3) the outcome desired by the facility for each disputed deficiency/violation.

(e) The facility submits its supporting documentation or information in the following format.

(1) Organize the attachments by deficiency/violation and cross-reference to the disputed deficiency/violation in the rebuttal letter.

(2) Ensure all information is labeled and legible.

(3) Highlight information relevant to the disputed deficiency/violation, such as a particular portion of a narrative.

(4) Describe the relevance of the documentation or information to the disputed deficiency/violation.

(5) Do not de-identify documents that name residents referenced in disputed deficiencies/violations.

(f) If the facility substantially complies with the procedures set out in subsections (d) and (e) of this section, HHSC will proceed with its review of the facility's IDR request.

(g) It is the facility's responsibility to present sufficient credible information to HHSC to support the outcome requested by the facility.

(h) Possible outcomes of an IDR for nursing facilities and ICF/IID are:

(1) a determination that there is insufficient evidence to sustain a deficiency/violation;

(2) a determination that there is insufficient evidence to sustain a portion of or a finding of a deficiency/violation;

(3) a determination that there is sufficient evidence to sustain a deficiency/violation;

(4) a determination that there is insufficient evidence to sustain the deficiency/violation as cited but that there is sufficient evidence to sustain a different citation;

(5) a determination that there is insufficient evidence to sustain the severity and scope assessment but that there is sufficient evidence to sustain a reduced severity and scope assessment (for Immediate Jeopardy or Substandard Quality of Care only); or

(6) a determination that there is sufficient evidence to sustain the severity and scope assessment as cited.

(i) HHSC will not conduct an IDR based on alleged surveyor misconduct, alleged State survey agency failure to comply with survey protocol, complaints about existing federal or State standards, or attempts to clear previously corrected deficiencies/violations.

(j) Upon receipt of the facility's IDR request, the State survey agency must submit to HHSC the following supporting documentation:

(1) resident identifier list;

(2) report of contact; and

(3) Automated Survey Processing Environment (ASPEN) event ID number.

(k) Any information related to an IDR request that is received by HHSC from either the facility or the State survey agency will be made available by HHSC to the opposing party. Parties have until the end of the second business day after receipt of such shared IDR information to respond to HHSC about that information. HHSC will share any responses with the opposing party.

(l) HHSC may request additional information from the facility and/or the State survey agency. Both parties will be notified of the request for additional information and have until the end of the second business day after notification to respond to the request. The opposing party will be provided with copies of the response submitted to HHSC.

(m) All responses to shared information as described in subsections (j) and (k) of this section must be received no later than the tenth calendar day after the facility's rebuttal letter and supporting documentation are submitted.

(n) Ex parte communications by the facility or by the State survey agency with HHSC personnel conducting the IDR are prohibited.

(o) An eligible facility may participate in an IDR conference provided that the facility requested an IDR conference on the IDR request form.

(p) Any IDR conference will be scheduled by HHSC, or its designee on or before the 22nd calendar day after HHSC received the IDR request. If the facility is unable to participate on the scheduled date, the IDR conference will be cancelled, and the IDR will continue as though no conference had been requested.

(q) The IDR conference is an informal opportunity for an eligible facility to present important information previously submitted in the facility's rebuttal letter or responses to shared information. The facility and the State survey agency may attend any IDR conference, but neither party may present information that was not previously included in the Statement of Deficiencies/Licensing Violations, submitted in the provider's rebuttal letter, or responses to shared information as set forth in subsections (j), (k), and (l) of this section. While the facility may ask clarifying questions related to the information in the Statement of Deficiencies/Licensing Violations, the questions are strictly limited to the review in question.

(r) HHSC will complete the IDR no later than the 30th calendar day after its receipt of the facility's written request. The IDR recommendation shall be in writing, address all the issues raised by the facility, and explain the rationale for the recommendation.

(s) The time frames designated in the IDR process shall be computed in accordance with Texas Government Code §311.014.

(t) HHSC may issue and enforce operating procedures concerning the IDR process and the conduct of IDR participants. IDR participants must comply with any such procedures. HHSC may deny an IDR request if the information submitted is incorrect, incomplete, or otherwise not in compliance with applicable HHSC operating procedures.

(u) The State survey agency may revise an IDR recommendation as a result of a review and subsequent determination that the IDR recommendation may violate a federal law, regulation, or the CMS State Operations Manual.

(v) HHSC may contract with an appropriate disinterested organization to adjudicate disputes between a facility and the State survey agency. Texas Government Code §2009.053 does not apply to the selection of an appropriate disinterested organization. For purposes of this section, a reference to HHSC with respect to HHSC's role in the IDR process includes an organization with which HHSC has contracted for the purpose of performing IDR, and a contracted organization is bound by the same requirements to which HHSC is bound for the purposes of conducting an IDR. The results of an IDR conducted by a contracted organization serve only as a recommendation to the State survey Agency. The State survey Agency maintains responsibility for and makes final IDR decisions.

§393.3. Informal Dispute Resolution for Texas Home Living and Home and Community-Based Service Providers.

(a) The Texas Health and Human Services Commission (HHSC) provides an informal dispute resolution (IDR) process for Texas Home Living (TxHmL) and Home and Community-based Service (HCS) providers (hereinafter referred to collectively as "provider") through which a provider may dispute citations cited against that provider by the State survey agency.

(b) The HHSC IDR Department must receive a provider's written request for an IDR no later than the tenth calendar day after the provider's receipt of the final report from the State survey agency, or its designee. The provider must submit its written request for an IDR on the form designated for that purpose by HHSC. HHSC will make that form publicly available, e.g., maintained on the HHSC website. The provider must also submit the final report containing the citations the provider wishes to dispute.

(c) Within three business days of its receipt of the provider's written request for an IDR, HHSC will notify the provider and the State survey agency of its receipt of the request.

(d) Within five calendar days of HHSC's receipt of the provider's request for an IDR, HHSC must receive from the provider, the provider's rebuttal letter and attached supporting documentation. The rebuttal letter must contain:

- (1) a list of the citations disputed (only those citations listed on the IDR request form and addressed in the rebuttal letter and supporting documentation will be reviewed);
- (2) the reason or reasons each citation is disputed; and
- (3) the outcome desired by the provider for each disputed citation.

(e) The provider submits its supporting documentation or information in the following format:

- (1) organize the attachments by citation and cross-reference to the disputed citation in the rebuttal letter;
- (2) ensure all information is labeled and legible;
- (3) highlight information relevant to the disputed citation, such as a particular portion of a narrative;
- (4) describe the relevance of the documentation or information to the disputed citation; and
- (5) do not de-identify documents that name individuals referenced in disputed citations.

(f) If the provider substantially complies with the procedures set out in subsections (d) and (e) of this section, HHSC will proceed with its review of the provider's IDR request.

(g) It is the provider's responsibility to present sufficient credible information to HHSC to support the outcome requested by the provider.

(h) Possible outcomes of an IDR for TxHmL and HCS are:

- (1) a determination that there is insufficient evidence to sustain a citation;
- (2) a determination that there is insufficient evidence to sustain a portion of or a finding of a citation;
- (3) a determination that there is sufficient evidence to sustain a citation;
- (4) a determination that there is insufficient evidence to sustain the citation as cited but that there is sufficient evidence to sustain a different citation;
- (5) a determination that there is insufficient evidence to sustain the severity and scope assessment but that there is sufficient evidence to sustain a reduced severity and scope assessment (for Immediate Threat only); or

(6) a determination that there is sufficient evidence to sustain the severity and scope assessment as cited.

(i) HHSC will not conduct an IDR based on alleged surveyor misconduct, alleged State survey agency failure to comply with survey protocol, complaints about existing federal or State standards, or attempts to clear previously corrected citations.

(j) Upon receipt of the provider's IDR request, the State survey agency must submit the following to HHSC:

- (1) report Log ID;
- (2) contract number; and
- (3) component code.

(k) Any information related to an IDR request that is received by HHSC from either the provider or the State survey agency will be made available by HHSC to the opposing party. Parties have until the end of the second business day after receipt of such shared IDR information to respond to HHSC about that information. HHSC will share any responses with the opposing party.

(l) HHSC may request additional information from the provider and/or the State survey agency. Both parties will be notified of the request for additional information and have until the end of the second business day after notification to respond to the request. The opposing party will be provided with copies of the response submitted to HHSC.

(m) All responses to shared information as described in subsections (j) and (k) above must be received no later than the tenth calendar day after the provider's rebuttal letter and supporting documentation are submitted.

(n) Ex parte communications by the provider or by the State survey agency with HHSC personnel conducting the IDR are prohibited.

(o) A provider may participate in an IDR conference provided that the provider requested an IDR conference on the IDR request form.

(p) Any IDR conference will be scheduled by HHSC, or its designee on or before the 22nd calendar day after HHSC received the IDR request. If the provider is unable to participate on the scheduled date, the IDR conference will be cancelled, and the IDR will continue as though no conference had been requested.

(q) The IDR conference is an opportunity for an eligible provider to present important information previously submitted in the provider's rebuttal letter or responses to shared information. The provider and the State survey agency may attend any IDR conference, but neither party may present information that was not previously included in the final report, submitted in the provider's rebuttal letter, or responses to shared information.

(r) HHSC will complete the IDR no later than the 30th calendar day after its receipt of the provider's written request. The IDR recommendation shall be in writing, address all the issues raised by the provider, and explain the rationale for the recommendation.

(s) The time frames designated in the IDR process shall be computed in accordance with Texas Government Code §311.014.

(t) HHSC may issue and enforce operating procedures concerning the IDR process and the conduct of IDR participants. IDR participants must comply with any such procedures. HHSC may deny an IDR request if the information submitted is incorrect, incomplete, or otherwise not in compliance with applicable HHSC operating procedures.

(u) The State survey agency may revise an IDR recommendation as a result of a review and subsequent determination that the IDR recommendation may violate a federal law, regulation, or State of Texas rule.

(v) HHSC may contract with an appropriate disinterested organization to adjudicate disputes between a provider and the State survey agency. Texas Government Code §2009.053 does not apply to the selection of an appropriate disinterested organization. For purposes of this section, a reference to HHSC with respect to HHSC's role in the IDR process includes an organization with which HHSC has contracted for the purpose of performing IDR, and a contracted organization is bound by the same requirements to which HHSC is bound for the purposes of conducting an IDR. The results of an IDR conducted by a contracted organization serve only as a recommendation to the State survey Agency. The State survey Agency maintains responsibility for and makes final IDR decisions.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 706-7273



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)

The Railroad Commission of Texas (Commission) adopts amendments, new rules, and repeals in 16 TAC Chapter 13, relating to Regulations for Compressed Natural Gas (CNG). Sections 13.25 and 13.36 are adopted with changes and the remaining rules without changes from the proposed text as published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7847). Sections 13.25 and 13.36 will be republished.

In Subchapter A, Scope and Definitions, the Commission adopts amendments to §13.1, Applicability, Severability, and Retroactivity; the repeal of §13.2, Retroactivity; amendments to §13.3, Definitions; §13.4, CNG Forms; and §13.15, Penalty Guidelines and Enforcement.

In Subchapter B, General Rules for Compressed Natural Gas (CNG) Equipment Qualifications, the Commission adopts amendments to §13.21, Applicability; and §13.22, Odorization; new §13.23, Installation and Maintenance; amendments to §13.24, School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections; and §13.25, Filings Required for Stationary CNG Installations; the repeal of §13.26, Design and Construction of Cylinders, Pressure Vessels, and Vapor Recovery Receivers; new §13.26, Notice of, Objections to, and Hearings on Proposed Stationary CNG Installations; the repeal of §§13.27 - 13.33, Pressure Relief Devices; Pressure Gauges; Pressure Regulators; Piping; Valves; Hose and Hose Connections; and Compression Equipment; amendments to §13.34, Vehicle Fueling Connection; §13.35, Application for an Exception to a Safety Rule; and §13.36, Report of CNG Incident/Accident; new §13.37, Appurtenances and Equipment; amendments to §13.38, Removal from CNG Service; §13.39, Filling Unapproved Containers Prohibited; and §13.40, Manufacturer's Nameplates and Markings on ASME Containers.

In Subchapter C, Classification, Registration, and Examination, the Commission adopts amendments to §13.61, License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals; §13.62, Insurance Requirements; §13.63, Self-Insurance Requirements; §13.64, Irrevocable Letter of Credit; the repeal of §13.65, Statements in Lieu of Insurance Certificates; amendments to §13.67, Changes in Ownership, Form of Dealership, or Name of Dealership; the repeal of §13.68, Dealership Name Change; amendments to §13.69, Registration and Transfer of CNG Cargo Tanks or Delivery Units; §13.70, Examination and Exempt Registration Requirements and Renewals; §13.71, Hearings for Denial, Suspension, or Revocation of Licenses,

Manufacturer Registrations, or Certificates; §13.72, Designation and Responsibilities of Company Representatives and Operations Supervisors; §13.73, Employee Transfers; §13.75, Franchise Tax Certification and Assumed Name Certificate; and §13.80, Requests for CNG Classes.

In Subchapter D, CNG Compression, Storage, and Dispensing Systems, the Commission adopts the repeal of §13.92, System Component Qualification; amendments to §13.93, System Protection Requirements; the repeal of §§13.94 - 13.105, Location of Installations; Installation of Cylinders and Cylinder Appurtenances; Installation of Pressure Relief Devices; Installation of Pressure Regulators; Installation of Pressure Gauges; Installation of Piping and Hoses; Testing; Installation of Emergency Shutdown Equipment; Installation of Electrical Equipment; Stray or Impressed Currents and Bonding; Operation; and Fire Protection; and amendments to §13.106, Maintenance; and §13.107, Dispenser Installation.

In Subchapter E, Engine Fuel Systems, the Commission adopts the repeal of §13.132, System Component Qualification; amendments to §13.133, Installation of Fuel Supply Containers; the repeal of §§13.134 - 13.141, Installation of Venting Systems; Installation of Piping; Installation of Valves; Installation of Pressure Gauges; Installation of Pressure Regulators; Installation of Fueling Connection; Labeling; and System Testing; amendments to §13.142, Maintenance and Repair; and §13.143, Venting of CNG to the Atmosphere.

In Subchapter F, Residential Fueling Facilities, the Commission adopts the repeal of §13.182, Scope; amendments to §13.183, System Component Qualifications; the repeal of §§13.184 - 13.186, General; Installation; and Outdoor Installations; amendments to §13.187, Installation of Pressure Relief Devices; the repeal of §13.188 and §13.189, Installation of Pressure Gauges; and Pressure Regulation; amendments to §13.190, Piping and Hose; and the repeal of §§13.191 - 13.194, Testing; Installation of Emergency Shutdown Equipment; Operation; and Maintenance and Inspection.

The Commission adopts new Subchapter G, Adoption by Reference of NFPA 52 (Vehicular Gaseous Fuel Systems Code) to include new §13.201, Adoption by Reference of NFPA 52; §13.202, Clarification of Certain Terms Used in NFPA 52; and §13.203, Sections in NFPA 52 Adopted with Additional Requirements or Not Adopted.

The Commission adopts new Subchapter H, Adoption by Reference of NFPA 55 (Compressed Gases and Cryogenic Fluids Code) to include new §13.301, Adoption by Reference of NFPA 55; §13.302, Clarification of Certain Terms Used in NFPA 55; and §13.303, Sections in NFPA 55 Adopted with Additional Requirements or Not Adopted. The Commission adopts to adopt the two NFPA standards to establish requirements for Texas CNG licensees and consumers consistent with most other states in the United States. Because NFPA 52 and 55 have been adopted in whole or in part by many states, the Texas CNG industry would benefit from their adoption because Texas companies would be held to the same standards.

The Commission received one comment on the proposal from CenterPoint Energy Resources generally supporting the proposal. CenterPoint suggested a clarification in the wording of §13.36 to change the word "event" to "incident or accident." The Commission agrees and has adopted that rule with this change.

The Commission also adopts two nonsubstantive clarifying changes in §13.25(b)(1)(D) and (5)(B).

The Commission adopts the amendments, new rules, and repeals to update and clarify the Commission's CNG rules. The main purpose of the rulemaking is to adopt by reference NFPA 52 and 55 in the new rules in Subchapters G and H. In addition to the new rules, the Commission adopts amendments to certain rules to incorporate or update references to sections in the NFPA standards, as well as other nonsubstantive clarifications. Rules adopted with these types of amendments include §§13.3, 13.4, 13.23, 13.25, 13.36, 13.37, 13.61, and 13.70.

Several rules are repealed; with the adoption by reference of NFPA 52 and 55, these rules are no longer necessary. Repealed rules include §§13.2, 13.26 - 13.33, 13.68, 13.92, 13.94 - 13.105, 13.132, 13.134 - 13.141, 13.182, 13.184 - 13.186, 13.188, 13.189, and 13.191 - 13.194.

Other rules with adopted amendments to add references to NFPA sections and make other clarifying changes include §§13.22, 13.34, 13.35, 13.38, 13.40, 13.93, 13.107, 13.133, 13.143, 13.183, 13.187, and 13.190.

The second purpose for the amendments, new rules, and repeals is to implement changes from the 86th Legislative Session. House Bill 2127 removed the requirement that manufacturers of CNG containers obtain a license from the Commission and instead requires registration with the Commission. Adopted changes to reflect this statutory change are found in §§13.3, 13.15, 13.61 - 13.63, 13.67, 13.70, 13.71, and 13.75. Operators will be required to comply with changes directly related to manufacturer registrations beginning February 15, 2021, the effective date of the amendments.

These rules also include nonsubstantive amendments to clarify existing language, correct outdated language such as incorrect division and department names, update references to other Commission rules, and ensure language throughout Chapter 13, and throughout the Commission's alternative fuels regulations, is consistent. Clarifying changes include amendments to improve readability such as removing repetitive language, adding internal cross references, and including language from a referenced section (e.g., a fee amount) to give the reader better access to applicable requirements.

Adopted amendments in §13.1 clarify that the requirements of Chapter 13 apply to the operation of CNG compression and dispensing systems in addition to their design and installation. Subsections (b) and (c) are moved from §13.21, and subsection (d) is moved from §13.2, which is repealed.

Adopted amendments to §13.3 remove definitions of terms that no longer appear in Chapter 13 or are only used within one section and, therefore, do not need to be defined. The amendments add definitions of "certificate holder," "certified," "licensed," "licensee," "operations supervisor," "registered manufacturer," "rules examination," "trainee," and "transfer system" as those terms are now used throughout the chapter. The amendments also clarify several existing definitions.

Adopted amendments in §13.4 remove the list of official forms from the rule language to ensure consistency with other chapters. All Commission forms are now located on the Commission's website. The amendments also specify the form amendment and adoption process, which is consistent with forms referenced in other Commission chapters.

New §13.23, relating to Installation and Maintenance, is added to ensure consistency among the Commission's alternative fuels regulations. It requires all CNG containers, valves, dispensers,

accessories, piping, transfer equipment, and gas utilization equipment to be installed and maintained in safe working order according to the manufacturer's instructions and the rules in Chapter 13.

Adopted amendments in §13.24, in addition to general updates and clarifications, clarify existing filing requirements for registering a CNG transport.

In addition to incorporating NFPA requirements, amendments to §13.25 make minor updates for clarity and change requirements to ensure consistency among the Commission's alternative fuels regulations. The amendments also reorganize the rule; several subsections are moved within §13.25 and subsection (l) was removed and relocated to §13.37.

New §13.26 specifies the process for notice of, objections to, and hearings on proposed stationary installations. The Commission's other alternative fuels regulations contain this process and it is added here for consistency.

Adopted amendments to §13.36 clarify existing requirements and include a change from the proposal as suggested by CenterPoint and discussed above.

Adopted amendments in §13.61 include changes to implement the registration requirement from House Bill 2127. "Manufacturer registration" is included alongside references to applications for license and exemptions, and the license categories are updated to include licenses currently offered by the Commission, including Categories 1A and 1B. New subsection (k) requires a new form, CNG Form 1001M, and specifies that a container manufacturer registration authorizes the manufacture, assembly, repair, testing and sale of CNG containers. The original registration fee is \$1,000; the renewal fee is \$600. Other wording generally clarifies license requirements and reflects the adoption of NFPA 52 and 55.

Adopted amendments to §13.67 specify the requirements for any changes in ownership, form of dealership, or name of dealership. The new rule incorporates existing procedures and reflects the process from the corresponding rule in Chapter 9 of this title.

Adopted amendments to §13.69 clarify requirements for registration and transfer of CNG cargo tanks or delivery units and conform the rule to similar provisions in Chapter 9 of this title.

Adopted amendments in §13.70 include requirements for individuals who perform work, directly supervise CNG activities, or are employed in any capacity requiring contact with CNG, in addition to certain NFPA-related amendments previously discussed. The amendments also ensure "certificate" and "certificate holder" are used throughout instead of using "certificate," "certificate holder," "certified," and "certification" inconsistently. Adopted wording clarifies requirements for certificate renewal and steps to renew a lapsed certificate. Other new wording specifies that an individual who passes the applicable examination with a score of at least 75% will become a certificate holder, clarifies where and when examinations are available, and states what an examinee must bring to the exam site. Further, the wording incorporates the examinations and their descriptions, which were previously included in a table, and clarifies the process for obtaining a management-level certificate.

Adopted amendments in §13.72 clarify filing requirements for company representatives, operations supervisors, and outlets, in addition to NFPA-related amendments previously discussed.

The amendments specify the requirements for designating company representatives and operations supervisors, and change wording from "termination" to "conclusion of employment" to better communicate AFS's intent for when a licensee must notify AFS of a company representative's or operations supervisor's departure.

Amendments adopted in §13.73 update the process for licensees who hire certificate holders, including allowing notification to the Commission to include only the last four digits of the employee's Social Security Number.

Amendments adopted in §13.93 include updates due to NFPA changes and also require uprights, braces, and cornerposts to be anchored in concrete a minimum of 12 inches below the ground. This change ensures consistency among the Commission's alternative fuels regulations.

Adopted amendments in §13.107 include updates due to NFPA changes and also add language previously found in other sections of the chapter. New language in subsection (b) was moved from subsection (d) of §13.93 (relating to System Protection Requirements) and new language in subsection (d) of §13.107 was moved from §13.104(i) (relating to Operation).

Adopted amendments in §13.142 remove specific requirements related to damaged supply lines and pressure relief devices and add a provision requiring removal of a vehicle from CNG service if any component is not in safe working order.

Other adopted amendments are nonsubstantive clarifications or updates such as correcting Commission department or division names, reorganization of the rule text, or other similar revisions. These types of amendments are adopted in §§13.21, 13.39, 13.64, 13.71, 13.73, 13.80, and 13.106.

SUBCHAPTER A. SCOPE AND DEFINITIONS

16 TAC §§13.1, 13.3, 13.4, 13.15

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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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Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
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Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295



16 TAC §13.2

The Commission adopts the repeal under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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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Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295



SUBCHAPTER B. GENERAL RULES FOR COMPRESSED NATURAL GAS (CNG) EQUIPMENT QUALIFICATIONS

16 TAC §§13.21 - 13.26, 13.34 - 13.40

The Commission adopts the amendments and new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person

engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

§13.25. Filings Required for Stationary CNG Installations.

(a) General requirements. In addition to NFPA 52 §7.3.1, and NFPA 55 §4.1, no CNG container shall be placed into CNG service or an installation operated or used in CNG service until the requirements of this section, as applicable, are met and the facility is in compliance with the rules in this chapter and all applicable statutes, in addition to any applicable requirements of the municipality or the county where an installation is or will be located.

(b) Installations with an aggregate storage capacity of 84,500 standard cubic feet or more. The storage capacity of each container is based on the container's operating pressure.

(1) For installations with an aggregate storage capacity of 84,500 standard cubic feet or more, the licensee shall submit the following information to AFS at least 30 days prior to construction:

- (A) CNG Form 1500;
- (B) CNG Form 1500A with all applicable documents;
- (C) a plat drawing from the appropriate appraisal district identifying:
 - (i) the facility's property boundaries;
 - (ii) the names of all real property owners within 500 feet; and
 - (iii) a 500-foot radius measured from the proposed container location on the site;
- (D) a site plan of sufficient scale that identifies:
 - (i) the location, types, and sizes of all CNG containers and compression and dispensing equipment already on site or proposed to be on site;
 - (ii) the distances from the containers, compression equipment, dispensing equipment, and material handling equipment to property lines, buildings on the same property, any electric transmission lines, and railroads. If the area where the container and/or compression equipment will be installed is a leased area or utility easement, the site plan shall indicate the boundaries of the leased area or utility easement, regardless of the size of the property in which the lease or easement lies;
 - (iii) any known potential hazards;
 - (iv) the location of CNG dispensers and their distance from any proposed container (the nearest container if more than one), property lines, buildings on the same property, roadways, and railroad track centerlines;
 - (v) the location of the nearest public sidewalk, highway, street, or road and its distance to containers and equipment;
 - (vi) the location of all sources of ignition;
 - (vii) the location of other types of aboveground fuel containers, the type of fuel stored, and the distance to CNG containers and dispensing equipment; and

(viii) the location of other types of fuel dispensers, the type of fuel dispensed, and the distance to CNG containers and dispensing equipment;

(E) a nonrefundable fee of \$50 for the initial application, or a nonrefundable fee of \$30 for a resubmission; and

(F) if the facility is accessed by cargo tanks from a public highway under the jurisdiction of the Texas Department of Transportation, a statement or permit from the Texas Department of Transportation showing that the driveway is of proper design and construction to allow safe entry and egress of the CNG cargo tanks.

(2) Printed copies of site plans with a legend must be printed to the correct size for the legend or distance provided.

(3) Prior to the installation of any individual CNG container, AFS shall determine whether the proposed installation constitutes a danger to the public health, safety, and welfare. The Commission does not consider public health, safety, and welfare to include such factors as the value of property adjacent to the installation, the esthetics of the proposed installation, or similar considerations. The applicant shall provide additional information if requested by AFS. AFS may impose restrictions or conditions on the proposed CNG installation based on one or more of the following factors:

(A) nature and density of the population or occupancy of structures within 500 feet of the proposed or existing container locations;

(B) nature of use of property located within 500 feet of the CNG installation;

(C) type of activities on the installation's premises;

(D) potential sources of ignition that might affect a CNG leak;

(E) existence of dangerous or combustible materials in the area that might be affected by an emergency situation;

(F) any known potential hazards or other factors material to the public health, safety, and welfare.

(4) AFS shall notify the applicant in writing outlining its findings.

(A) When AFS notifies an applicant of an incomplete CNG Form 1500 or CNG Form 1500A, the applicant has 120 calendar days from the date of the notification letter to resubmit the corrected application or the application will expire. After 120 days, the applicant shall file a new application to reactivate AFS review of the proposed installation.

(B) The applicant may request in writing an extension of the 120-day time period. The request shall be postmarked or physically delivered to AFS before the expiration date. AFS may extend the application period for up to an additional 90 days.

(5) If the application is administratively denied:

(A) AFS shall specify the deficiencies in the written notice required in paragraph (3) of this subsection.

(B) To proceed with the application, the applicant shall modify the submission and resubmit it for approval or request a hearing on the matter in accordance with Chapter 1 of this title (relating to Practice and Procedure). If the Commission finds after a public hearing that the proposed installation complies with the rules in this chapter and the statutes of the State of Texas, and does not constitute a danger to the public health, safety, and welfare, the Commission shall issue an interim approval order. The construction of the installation and the set-

ting of the container shall not proceed until the applicant has received written notification of the interim approval order. Any interim approval order shall include a provision that such approval may be suspended or revoked if:

(i) the applicant has introduced CNG into the system prior to final approval;

(ii) a physical inspection of the installation indicates that it is not installed in compliance with the submitted plat drawing for the installation, the rules in this chapter, or the statutes of the State of Texas; or

(iii) the installation constitutes a danger to the public health, safety, and welfare.

(6) The licensee shall not commence construction until notice of approval is received from AFS.

(A) If the subject installation is not completed within one year from the date AFS has granted construction approval, the application will expire.

(B) Prior to the date of expiration, the applicant may request in writing an extension of time of up to 90 days to complete the installation.

(C) If the applicant fails to request an extension of time within the time period prescribed in this paragraph, the applicant shall submit a new application before the installation can be completed.

(7) The applicant shall submit to AFS written notice of completed construction and the Commission shall complete the field inspection as specified in subsection (e) of this section. After the Commission has completed the inspection, the operator, pending the inspection findings, may commence CNG activities at the facility.

(8) A licensee shall not be required to submit CNG Form 1500, CNG Form 1500A, or a site plan prior to the installation of dispensers, equipment, piping, or when maintenance and improvements are being made at an existing CNG installation.

(9) If a licensee is replacing a container with a container of the same or less overall diameter and length or height, and is installing the replacement container in the identical location of the existing container, the licensee shall file CNG Form 1500.

(10) AFS may request CNG Form 1008, a Manufacturer's Data Report, or any other documentation or information pertinent to the installation in order to determine compliance with the rules in this chapter.

(11) For an installation that is a licensee outlet, the licensee shall submit CNG Form 1001A within 30 days of installation, in accordance with §13.61(j) of this title (relating to License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals).

(c) Commercial installations with an aggregate storage capacity of less than 240 standard cubic feet water volume. The storage capacity of each container is based on the container's operating pressure.

(1) Within 10 calendar days following the completion of a commercial container installation, the licensee shall submit CNG Form 1501 to AFS stating:

(A) the installation fully complies with the statutes and the rules in this chapter;

(B) all necessary Commission licenses, certificates, and permits have been issued; and

(C) the date the installation has been placed into CNG service.

(2) The licensee shall pay a nonrefundable fee of \$10 for each container, cascade, and compressor listed on the form. One fee is required for each cascade regardless of the number of cylinders in the cascade.

(A) AFS shall review the submitted information and shall notify the applicant in writing of any deficiencies.

(B) A nonrefundable fee of \$20 shall be required for any resubmission.

(3) CNG activities may commence prior to the submission of CNG Form 1501 if the facility is in compliance with the rules in this chapter.

(d) Physical inspection of stationary installations.

(1) Aggregate storage capacity of 240 standard cubic feet water volume or more. The applicant shall notify AFS in writing when the installation is ready for inspection.

(A) If any non-compliance items are cited at the time of AFS' initial inspection, the installation shall not be placed into CNG service until the non-compliance items are corrected, as determined at the time of inspection, depending on the nature of the non-compliance items cited.

(B) If AFS does not physically inspect the facility within 30 calendar days of receipt of notice that the facility is ready for inspection, the facility may operate conditionally until the initial inspection is completed.

(2) Aggregate storage capacity of less than 240 standard cubic feet water volume. After receipt of CNG Form 1501, AFS shall conduct an inspection as soon as possible to verify the installation described complies with the rules in this chapter. The facility may be operated prior to inspection if the facility fully complies with the rules in this chapter. If the initial inspection at a commercial installation results in the citation of non-compliance items, AFS may require that the subject container, including any piping, appliances, appurtenances, or equipment connected to it be immediately removed from CNG service until the applicant corrects the non-compliance items.

(3) Material variances. If AFS determines the completed installation varies materially from the application originally accepted, correction of the variance and notification to AFS or resubmittal of the application is required. AFS' review of such resubmitted application shall comply with subsection (b)(3) of this section.

(4) In the event an applicant has requested an inspection and AFS' inspection identifies non-compliance items requiring modifications by the applicant, AFS may assess an inspection fee to cover the costs associated with any additional inspection, including mileage and per diem rates set by the legislature.

§13.36. Report of CNG Incident/Accident.

(a) At the earliest practical moment or within two hours following discovery, a licensee owning, operating, or servicing equipment or an installation shall notify AFS by telephone of any incident or accident involving CNG which:

- (1) caused a death or personal injury requiring hospitalization;
- (2) required taking an operating facility out of service;
- (3) resulted in unintentional gas ignition requiring emergency response;

(4) meets the requirements of subsection (c) of this section;

(5) caused an estimated damage to the property of the operator, others or both totaling \$50,000 or more, including gas loss;

(6) involves a single release of CNG during or following CNG transfer or during container transportation. Any loss of CNG which is less than 1.0% of the gross amount delivered, stored, or withdrawn need not be reported. However, any loss occurring as a result of a pullaway shall be reported;

(7) could reasonably be judged as significant because of rerouting of traffic, evacuation of buildings, or media interest, even though it does not meet paragraphs (1) - (6) of this subsection; or

(8) is required to be reported to any other state or federal agency (such as the Texas Department of Public Safety or the United States Department of Transportation).

(b) The telephonic notice required by this section shall be made to the Railroad Commission's 24-hour emergency line at (512) 463-6788 or (844) 773-0305 and shall include the following:

- (1) date and time of the incident;
- (2) name of reporting operator;
- (3) phone number of operator;
- (4) location of leak or incident;
- (5) personal injuries and/or fatalities;
- (6) whether fire, explosion, or gas leak has occurred;
- (7) status of gas leak or other immediate hazards;
- (8) other significant facts relevant to the incident; and
- (9) whether immediate assistance from AFS is requested.

(c) Any transport unit required to be registered with AFS in accordance with §13.69 of this title (relating to Registration and Transfer of CNG Cargo Tanks and Delivery Units) which is involved in an accident where there is damage to the tank, piping or appurtenances, or any release of CNG resulting from an accident shall be reported to AFS in accordance with this section regardless of the accident location. Any CNG powered motor vehicle used for school transportation or mass transit including any state owned vehicle which is involved in an accident resulting in a substantial release of CNG or damage to the CNG conversion equipment shall be reported to AFS in accordance with this section regardless of accident location.

(d) Following the initial telephone report, the licensee who made the telephonic report shall submit CNG Form 1020 to AFS. The form shall be postmarked within 14 calendar days of the date of initial notification to AFS, or within five business days of receipt of the fire department report, whichever occurs first, unless AFS grants authorization for a longer period of time when additional investigation or information is necessary.

(e) Within five business days of receipt, AFS shall review CNG Form 1020 and notify in writing the person submitting CNG Form 1020 if the report is incomplete and specify in detail what information is lacking or needed. Incomplete reports may delay the resumption of CNG activities at the involved location.

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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Haley Cochran
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16 TAC §§13.26 - 13.33

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

16 TAC §§13.61 - 13.64, 13.67, 13.69 - 13.73, 13.75, 13.80

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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16 TAC §13.65, §13.68

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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SUBCHAPTER D. CNG COMPRESSION, STORAGE, AND DISPENSING SYSTEMS

16 TAC §§13.92, 13.94 - 13.105

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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16 TAC §§13.93, 13.106, 13.107

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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SUBCHAPTER E. ENGINE FUEL SYSTEMS

16 TAC §§13.132, 13.134 - 13.141

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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16 TAC §§13.133, 13.142, 13.143

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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SUBCHAPTER F. RESIDENTIAL FUELING FACILITIES

16 TAC §§13.182, 13.184 - 13.186, 13.188, 13.189, 13.191 - 13.194

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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16 TAC §§13.183, 13.187, 13.190

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission

to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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SUBCHAPTER G. ADOPTION BY REFERENCE OF NFPA 52 (VEHICULAR GASEOUS FUEL SYSTEMS CODE)

16 TAC §§13.201 - 13.203

The Commission adopts the new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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SUBCHAPTER H. ADOPTION BY REFERENCE OF NFPA 55 (COMPRESSED GASES AND CRYOGENIC FLUIDS CODE)

16 TAC §§13.301 - 13.303

The Commission adopts the new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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CHAPTER 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)

The Railroad Commission of Texas (Commission) adopts amendments, new rules, and repeals in 16 TAC Chapter 14. Sections 14.2040 and 14.2049 are adopted with changes. The rules will be republished. The remaining sections are adopted without changes from the proposed text as published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7881). The rules will not be republished. In Subchapter A, General Applicability and Requirements, the Commission adopts amendments to §14.2004, Applicability, Severability,

and Retroactivity; §14.2007, Definitions; §14.2010, LNG Forms; and §14.2013, License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals; the repeal of §14.2014, Military Fee Exemption; new §14.2014, Application for License or Manufacturer Registration (New and Renewal); the repeal of §14.2015, Penalty Guidelines for LNG Safety Violations; new §14.2015, Military Fee Exemption; the repeal of §14.2016, Licensing Requirements; new §14.2016, Penalty Guidelines and Enforcement; amendments to §14.2019, Examination Requirements and Renewals; §14.2020, Employee Transfers; and §14.2021, Requests for LNG Classes; the repeal of §14.2022, Denial, Suspension, or Revocation of Licenses or Certifications, and Hearing Procedure; amendments to §14.2025, Designation and Responsibilities of Company Representatives and Operations Supervisors; and §14.2028, Franchise Tax Certification and Assumed Name Certificates; new §14.2029, Changes in Ownership, Form of Dealership, or Name of Dealership; amendments to §14.2031, Insurance Requirements; and §14.2034, Self-Insurance Requirements; the repeal of §14.2037, Components of LNG Stationary Installations Not Specifically Covered; amendments to §14.2040, Filings Required for Stationary LNG Installations; new §14.2041, Notice of, Objections to, and Hearings on Proposed Stationary LNG Installations; and new §14.2042, Physical Inspection of Stationary Installations; amendments to §14.2043, Temporary Installations; §14.2046, School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections; §14.2049, Report of LNG Incident/Accident; and §14.2052, Application for an Exception to a Safety Rule.

In Subchapter B, General Rules for All Stationary LNG Installations, the Commission adopts amendments to §14.2101, System Protection Requirements; new §14.2102, Installation and Maintenance; amendments to §14.2104, Testing of Containers; the repeal of §14.2107, Stationary LNG Storage Containers; amendments to §14.2110, LNG Container Installation Distance Requirements; the repeal of §14.2113, Maintenance Tanks; amendments to §14.2116, Venting of LNG; §14.2119, Transport Vehicle Loading and Unloading Facilities and Procedures; §14.2122, Pumps and Compressors Used for LNG and Refrigerants; and §14.2125, Hoses and Arms; the repeal of §14.2128, Communications and Lighting; amendments to §14.2131, Fire Protection; the repeal of §14.2134, Container Purging Procedures; amendments to §14.2137, Employee Safety and Training; and the repeal of §14.2140, Inspection and Maintenance.

In Subchapter D, General Rules for LNG Fueling Facilities, the Commission adopts amendments to §14.2304, General Facility Design; the repeal of §14.2307, Indoor Fueling; amendments to §14.2310, Emergency Refueling; and §14.2313, Fuel Dispensing Systems; new §14.2314, Removal from LNG Service; the repeal of §14.2316, Filings Required for Installation of Fuel Dispensers; amendments to §14.2319, Automatic Fuel Dispenser Safety Requirements; the repeal of §14.2322, Protection of Automatic and Other Dispensers; §14.2325, LNG Transport Unloading at Fueling Facilities; and §14.2328, Training, Written Instructions, and Procedures Required.

In Subchapter E, Piping Systems and Components for All Stationary LNG Installations, the repeal of §14.2404, Piping Materials; §14.2407, Fittings Used in Piping; §14.2410, Valves; and §14.2413, Installation of Piping; amendments to §14.2416, Installation of Valves; the repeal of §14.2419, Welding at Piping Installations; §14.2422, Pipe Marking and Identification;

§14.2425, Pipe Supports; §14.2428, Inspection and Testing of Piping; §14.2431, Welded Pipe Tests; §14.2434, Purging of Piping Systems; §14.2437, Pressure and Relief Valves in Piping; and §14.2440, Corrosion Control.

In Subchapter F, Instrumentation and Electrical Services, the Commission adopts the repeal of all rules in the subchapter, including §14.2501, Liquid Level Gauging; §14.2504, Pressure Gauges; §14.2507, Vacuum Gauges; §14.2510, Emergency Failsafe; §14.2513, Electrical Equipment; and §14.2516, Electrical Grounding and Bonding.

In Subchapter G, Engine Fuel Systems, the Commission adopts amendments to §14.2604, System Component Qualification, the repeal of §14.2607, Vehicle Fuel Containers; amendments to §14.2610, Installation of Vehicle Fuel Containers; the repeal of §14.2613, Engine Fuel Delivery Equipment; and §14.2616, Installation of Venting Systems and Monitoring Sensors; amendments to §14.2619, Installation of Piping; the repeal of §14.2622, Installation of Valves; amendments to §14.2625, Installation of Pressure Gauges; the repeal of §14.2628, Installation of Pressure Regulators; and §14.2631, Wiring; amendments to §14.2634, Vehicle Fueling Connection; §14.2637, Signs and Labeling; and §14.2640, System Testing.

In Subchapter H, LNG Transports, the Commission adopts amendments to §14.2701, DOT Requirements; §14.2704, Registration and Transfer of LNG Transports; §14.2705, Replacement Decals; §14.2707, Testing Requirements; §14.2710, Markings; §14.2737, Parking of LNG Transports and Container Delivery Units, and Use of Chock Blocks; and §14.2746, Delivery of Inspection Report to Licensee; and the repeal of §14.2749, Issuance of LNG Form 2004 Decal.

The Commission adopts new Subchapter I, Adoption by Reference of NFPA 52 (Vehicular Gaseous Fuel Systems Code) to include new §14.2801, Adoption by Reference of NFPA 52; §14.2802, Clarification of Certain Terms Used in NFPA 52; and §14.2803, Sections in NFPA 52 Adopted with Additional Requirements or Not Adopted.

The Commission adopts new Subchapter J, Adoption by Reference of NFPA 59A (Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)) to include new §14.2901, Adoption by Reference of NFPA 59A; §14.2902, Clarification of Certain Terms Used in NFPA 59A; and §14.2903, Sections in NFPA 59A Adopted with Additional Requirements or Not Adopted. The Commission adopts to adopt the two NFPA standards to establish requirements for Texas LNG licensees and consumers consistent with most other states in the United States. Because NFPA 52 and 59A have been adopted in whole or in part by many states, the Texas LNG industry would benefit from their adoption because Texas companies would be held to the same standards.

The Commission received one comment on the proposal from CenterPoint Energy Resources generally supporting the proposal. CenterPoint suggested a clarification in the wording of §14.2049 to change the word "event" to "incident or accident." The Commission agrees and has adopted that rule with this change.

The Commission also adopts nonsubstantive clarifying changes in §14.2040(c)(1)(D) and (6)(B).

The Commission adopts the amendments, new rules, and repeals to update and clarify the Commission's LNG rules. The main purpose of the rulemaking is to adopt by reference NFPA

52 and 59A in the new rules in Subchapters I and J. In addition, the Commission adopts amendments to certain rules to incorporate or update references to sections in the NFPA standards, as well as other nonsubstantive clarifications. Rules adopted with these types of amendments include §§14.2019, 14.2025, 14.2052, 14.2101, 14.2110, 14.2116, 14.2119, 14.2122, 14.2125, 14.2131, 14.2304, 14.2313, 14.2319, 14.2416, 14.2604, 14.2610, 14.2619, 14.2625, 14.2634, 14.2637, and 14.2640.

Several rules are repealed; with the adoption by reference of NFPA 52 and 59A, these rules are no longer necessary. Rules that are repealed include §§14.2037, 14.2107, 14.2113, 14.2128, 14.2134, 14.2140, 14.2307, 14.2316, 14.2322, 14.2325, 14.2328, 14.2404, 14.2407, 14.2410, 14.2413, 14.2419, 14.2422, 14.2425, 14.2428, 14.2431, 14.2434, 14.2437, 14.2440, 14.2501, 14.2504, 14.2507, 14.2510, 14.2513, 14.2516, 14.2607, 14.2613, 14.2616, 14.2622, 14.2628, 14.2631, 14.2643, and 14.2749.

The second purpose for the amendments, new rules, and repeals is to implement changes from the 86th Legislative Session. House Bill 2127 removed the requirement that manufacturers of LNG containers obtain a license from the Commission and instead requires registration with the Commission. Changes to reflect this statutory change are found in §§14.2007, 14.2013, 14.2014, 14.2016, 14.2028, new 14.2029, and 14.2031. Operators will be required to comply with changes directly related to manufacturer registrations beginning February 15, 2021, the effective date of the amendments.

These rules also include nonsubstantive amendments to clarify existing language, correct outdated language such as incorrect division and department names, update references to other Commission rules, and ensure language within Chapter 14, and throughout the Commission's alternative fuels regulations, is consistent. Clarifying changes include amendments to improve readability such as removing repetitive language, adding internal cross references, and including language from a referenced section (e.g., a fee amount) to give the reader better access to applicable requirements.

Adopted amendments to §14.2007 remove definitions of terms that no longer appear in Chapter 14 or are only used within one section and, therefore, do not need to be defined. The amendments add definitions of "certificate holder," "pullaway," "registered manufacturer," and "rule examination," as those terms are now used throughout the chapter. The amendments also clarify several existing definitions.

Amendments in §14.2010 remove the list of official forms from the rule language to ensure consistency with other chapters. All Commission forms are now located on the Commission's website. The amendments also specify the form amendment and adoption process.

Amendments in §14.2013 include changes to implement the registration requirement from House Bill 2127.

New §14.2014 contains language moved from current §14.2016. New language includes subsection (h), which implements House Bill 2127 by requiring a new form, LNG Form 2001M, and specifying that a container manufacturer registration authorizes the manufacture, assembly, repair, testing and sale of LNG containers. The original registration fee is \$1,000; the renewal fee is \$600. Other adopted wording generally clarifies license requirements and reflects the adoption of NFPA 52 and 59A.

Current §14.2014 is repealed and the text is adopted as new §14.2015 with no changes other than the rule number.

Current §14.2015 is repealed and most of its text moved to §14.2016. The tables in §14.2016(a)(5) and (a)(11) include some changes from the existing tables in §14.2015. Most of these changes are made to reference container manufacturer requirements and penalty amounts, as well as the adoption of the NFPA documents. The remaining three tables moving from §14.2015 to new §14.2016 have no changes other than the Figure heading indicating the rule number.

New §14.2016(b) is moved from current §14.2022, which is repealed. New subsection (b) also incorporates references to registered manufacturers.

Adopted amendments in §14.2019 include requirements for individuals who perform work, directly supervise LNG activities, or are employed in any capacity requiring contact with LNG, in addition to certain NFPA-related amendments previously discussed. The amendments also ensure "certificate" and "certificate holder" are used throughout instead of using "certificate," "certificate holder," "certified," and "certification" inconsistently. Adopted wording clarifies requirements for certificate renewal and steps to renew a lapsed certificate. New wording specifies that an individual who passes the applicable examination with a score of at least 75% will become a certificate holder and clarifies where and when examinations are available and what an examinee must bring to the exam site. Further, the wording incorporates the examinations and their descriptions, which were previously included in a table, and clarifies the process for obtaining a management-level certificate. The examinations were previously listed in Figure 14.2019(a)(3) and are now adopted in §14.2019(c).

Amendments adopted in §14.2020 update the process for licensees who hire certificate holders, including allowing notification to the Commission to include only the last four digits of the employee's Social Security Number.

Adopted amendments in §14.2025 clarify filing requirements for company representatives, operations supervisors, and outlets, in addition to NFPA-related amendments previously discussed. The amendments specify the requirements for designating company representatives and operations supervisors, and change wording from "termination" to "conclusion of employment" to better communicate AFS's intent for when a licensee must notify AFS of a company representative's or operations supervisor's departure.

New §14.2029 specifies the requirements for any changes in ownership, form of dealership, or name of dealership. The new rule incorporates existing procedures and reflects the process from the corresponding rule in Chapter 9 of this title (relating to LP-Gas Safety Rules).

Amendments adopted in §14.2031 incorporate insurance requirements for registered manufacturers.

Amendments to §14.2040 remove language related to local requirements to ensure consistency among the Commission's alternative fuels regulations. Amendments reorganize the rule, make minor updates for clarity, and change requirements to ensure consistency among the Commission's alternative fuels regulations.

Existing §14.2040 (c) through (m) are deleted from §14.2040 and moved to new §§14.2041 and 14.2042 for better organization of the subject matter. Adopted wording in §14.2042 incorporates

new terminology used by AFS such that a "safety rule violation" is now called a "non-compliance item."

Adopted amendments in §14.2046, in addition to general updates and clarifications, clarify existing filing requirements for registering an LNG transport.

Amendments to §14.2049 clarify existing requirements and include a change from the proposal as suggested by CenterPoint and discussed above.

Amendments in §14.2101 include updates due to NFPA changes, and require uprights, braces, and cornerposts to be anchored in concrete a minimum of 12 inches below the ground. This provision is added to ensure consistency among the Commission's alternative fuels regulations.

Amendments in new §14.2102 and §14.2314 ensure the rules match current Commission procedure as well as the corresponding rules in Chapter 9.

Amendments in §14.2704 clarify requirements for registration and transfer of LNG cargo tanks or delivery units and conform the rule to similar provisions in Chapters 9 and 13 of this title.

Amendments in §14.2710 clarify the requirements for markings on LNG transports. New language adopted in subsection (b) requires certain types of public transportation vehicles to mark the location of the manual shutoff valve.

Other amendments are nonsubstantive clarifications or updates such as correcting Commission department or division names, reorganization of the rule text, or other similar revisions. These types of amendments are adopted in §§14.2004, 14.2021, 14.2034, 14.2043, 14.2104, 14.2137, 14.2310, 14.2701, 14.2704, 14.2705, 14.2707, 14.2710, 14.2737, and 14.2746.

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

16 TAC §§14.2004, 14.2007, 14.2010, 14.2013 - 14.2016, 14.2019 - 14.2021, 14.2025, 14.2028, 14.2029, 14.2031, 14.2034, 14.2040 - 14.2043, 14.2046, 14.2049, 14.2052

The Commission adopts the amendments and new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as stan-

dards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

§14.2040. *Filings Required for Stationary LNG Installations.*

(a) General requirements. No LNG container shall be placed into LNG service or an installation operated or used in LNG service until the requirements of this section, as applicable, are met and the facility is in compliance with all applicable rules in this chapter and statutes. LNG systems under the jurisdiction of DOT Safety regulations in 49 CFR Part 193 shall comply with Chapter 8 of this title (relating to Pipeline Safety Regulations) prior to implementation of service.

(b) Commercial installations with an aggregate water capacity of less than 15,540 gallons.

(1) Within 10 calendar days following the completion of a commercial container installation, the licensee shall submit LNG Form 2501 to AFS stating:

(A) the installation fully complies with the statutes and the rules in this chapter;

(B) all necessary Commission licenses, certificates, and permits have been issued; and

(C) the date the installation has been placed into LNG service.

(2) The licensee shall pay a nonrefundable fee of \$10 for each LNG container listed on the form.

(A) AFS shall review the submitted information and shall notify the applicant in writing of any deficiencies.

(B) A nonrefundable \$20 fee shall be required for any resubmission.

(3) LNG activities may commence prior to the submission of LNG Form 2501 if the facility is in compliance with the rules in this chapter.

(c) Aggregate water capacity of 15,540 gallons or more.

(1) For stationary installations with an aggregate water capacity of 15,540 gallons or more, the licensee shall submit the following information to AFS at least 30 days prior to construction:

(A) LNG Form 2500;

(B) LNG Form 2500A with all applicable documents;

(C) a plat drawing from the appropriate appraisal district identifying:

(i) the facility's property boundaries;

(ii) the names of all real property owners within 500 feet; and

(iii) a 500-foot radius measured from the proposed container location on the site;

(D) a site plan of sufficient scale that identifies:

(i) fire protection which complies with §14.2131 of this title (relating to Fire Protection);

(ii) the location, types, and size of all LNG containers already on site or proposed to be on site,

(iii) the distances from the container(s) to property lines and buildings;

(iv) the location of LNG dispensers and their distance from the proposed container (the nearest container if more than one), property lines, buildings on the same property, roadways, driveways, and railroad track centerlines;

(v) any known potential hazards;

(vi) the location of any sources of ignition;

(vii) the location of other types of aboveground fuel containers, the type of fuel stored, and the distance to LNG containers and dispensing equipment;

(viii) the location of other types of fuel dispensers, the type of fuel dispensed, and the distance to LNG containers and dispensing equipment;

(E) a non-refundable fee of \$50 for the initial application or a nonrefundable fee of \$30 for any resubmission; and

(F) if the facility is accessed by cargo tanks from a public highway under the jurisdiction of the Texas Department of Transportation, a statement or permit from the Texas Department of Transportation showing that the driveway is of proper design and construction to allow safe entry and egress of the LNG cargo tanks.

(2) Site plans shall include a scale or legend indicating the distances or measurements described and printed copies of plans with a legend must be printed to the correct size for the legend or distance provided.

(3) Plans and specifications submitted under paragraph (1)(D) of this subsection shall be sealed by a registered professional engineer licensed and in good standing to practice in the State of Texas and who is qualified in the area of the design and construction of LNG facilities.

(4) If the applicant modifies the plans and specifications before tentative or interim approval is granted by AFS or the Commission, respectively, the plans and specifications shall be resealed by a registered professional engineer licensed to practice in the State of Texas and resubmitted to AFS.

(5) Prior to the installation of any individual LNG container, AFS shall determine whether the proposed installation constitutes a danger to the public health, safety, and welfare. The applicant shall provide additional information if requested by AFS.

(A) AFS may impose restrictions or conditions on the proposed LNG installation based on one or more of the following factors:

(i) nature and density of the population or occupancy of structures within 500 feet of the proposed or existing container locations;

(ii) nature of use of property located within 500 feet of the LNG installation;

(iii) type of activities on the installation's premises;

(iv) potential sources of ignition that might affect an LNG leak;

(v) existence of dangerous or combustible materials in the area that might be affected by an emergency situation;

(vi) any known potential hazards or other factors material to the public health, safety, and welfare.

(B) The Commission does not consider public health, safety, and welfare to include such factors as the value of property adjacent to the installation, the esthetics of the proposed installation, or similar considerations.

(6) AFS shall notify the applicant as follows:

(A) If AFS administratively approves the installation, AFS shall notify the applicant in writing within 21 business days.

(B) If the application is administratively denied:

(i) AFS shall notify the applicant in writing, specifying the deficiencies, within 21 business days.

(ii) To proceed with the application, the applicant shall modify the submission and resubmit it for approval or request a hearing on the matter in accordance with Chapter 1 of this title (relating to Practice and Procedure). The subject of the submission shall not be operated or used in LNG service in this state until approved by the Commission following a hearing.

(iii) When AFS notifies an applicant of an incomplete LNG Form 2500 or LNG Form 2500A, the applicant has 120 calendar days from the date of the notification letter to resubmit the corrected application or the application will expire. After 120 days, the applicant shall file a new application to reactivate AFS review of the proposed installation.

(iv) The applicant may request in writing an extension of the 120-day time period. The request shall be postmarked or physically delivered to AFS before the expiration date. AFS may extend the application period for up to an additional 90 days.

(7) The licensee shall not commence construction until notice of approval is received from AFS.

(A) If the subject installation is not completed within one year from the date AFS has granted construction approval, the application will expire.

(B) Prior to the date of expiration, the applicant may request in writing an extension of time of up to 90 days to complete the installation.

(C) If the applicant fails to request an extension of time within the time period prescribed in this paragraph, the applicant will be required to submit a new application before the installation can be completed.

(8) The applicant shall submit to AFS written notice of completed construction and the Commission shall complete the field inspection as specified in §14.2042 of this title (relating to Physical Inspection of Stationary Installations).

(9) The container may be placed into service after AFS has completed the inspection and determines the installation meets all safety requirements.

(10) The proposed installation shall not be operated or used in LNG service until approved by AFS.

(11) A licensee shall not be required to submit LNG Form 2500, LNG Form 2500A, or a site plan prior to the installation of pull-away devices, or emergency shutoff valves (ESV's), or when maintenance and improvements are being made to the piping system at an existing LNG installation.

(12) If a licensee is replacing a container with a container of the same or less overall diameter and length or height, and is installing the replacement container in the identical location of the existing container, the licensee shall file LNG Form 2500.

(d) AFS may request LNG Form 2008, a Manufacturer's Data Report, or any other documentation or information pertinent to the installation in order to determine compliance with the rules in this chapter.

(e) For an installation that is a licensee outlet, the operating licensee shall comply with §14.2014 of this title (relating to Applications for License or Manufacturer Registration (New and Renewal)) within 30 days of installation.

§14.2049. *Report of LNG Incident/Accident.*

(a) At the earliest practical moment or within two hours following discovery, a licensee owning, operating, or servicing equipment or an installation shall notify AFS by telephone of any incident or accident involving LNG which:

(1) involves a single release of LNG during or following LNG transfer or during container transportation. Any loss of LNG which is less than 1.0% of the gross amount delivered, stored, or withdrawn need not be reported. Any loss occurring as a result of a pull-away shall be reported;

(2) caused an estimated damage to the property of the operator, others, or both totaling \$50,000 or more, including gas loss;

(3) caused a death or any personal injury requiring hospitalization;

(4) required taking an operating facility out of service;

(5) resulted in an unintentional ignition of LNG requiring an emergency response;

(6) involved the LNG installation on any vehicle propelled by or transporting LNG;

(7) could reasonably be judged as significant because of rerouting of traffic, evacuation of buildings, or media interest, even though it does not meet paragraphs (1) - (6) of this subsection; or

(8) is required to be reported to any other state or federal agency (such as the Texas Department of Public Safety or U.S. Department of Transportation).

(b) Any transport unit required to be registered with AFS in accordance with §14.2704 of this title (relating to Registration and Transfer of LNG Transports) which is involved in an accident where there is damage to the tank, piping appurtenances, or any release of LNG resulting from the accident shall be reported to AFS, regardless of the accident location. Any LNG-powered motor vehicle used for school transportation or mass transit, including any state-owned vehicle, which is involved in an accident resulting in a release of LNG or damage to LNG equipment shall be reported to AFS, regardless of the accident location.

(c) The telephonic notice required by this section shall be made to the Railroad Commission's 24-hour emergency line at (512) 463-6788 or (844) 773-0305 and shall include the following:

(1) date and time of the incident;

(2) name of the reporting operator;

(3) phone number of the operator;

(4) location of the leak or incident;

(5) personal injuries and/or fatalities;

- (6) whether fire, explosion, or leak has occurred;
- (7) status of leak or other immediate hazards;
- (8) other significant facts relevant to the incident; and
- (9) whether immediate assistance from AFS is requested.

(d) Following the initial telephone report, the licensee who made the telephonic report shall submit LNG Form 2020 to AFS. The form shall be postmarked within 14 calendar days of the date of initial notification to AFS, or within five business days of receipt of the fire department report, whichever occurs first, unless AFS grants authorization for a longer period of time when additional investigation or information is necessary.

(e) Within five business days of receipt, AFS shall review LNG Form 2020 and notify in writing the person submitting LNG Form 2020 if the report is incomplete and specify in detail what information is lacking or needed. Incomplete reports may delay the resumption of LNG activities at the involved location.

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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 Haley Cochran
 Rules Attorney, Office of General Counsel
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 For further information, please call: (512) 475-1295



16 TAC §§14.2014 - 14.2016, 14.2022, 14.2037

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 B. GENERAL RULES FOR ALL STATIONARY LNG INSTALLATIONS

16 TAC §§14.2101, 14.2102, 14.2104, 14.2110, 14.2116, 14.2119, 14.2122, 14.2125, 14.2131, 14.2137

The Commission adopts the amendments and new rule under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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16 TAC §§14.2107, 14.2113, 14.2128, 14.2134, 14.2140

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and

maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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Rules Attorney, Office of General Counsel

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SUBCHAPTER D. GENERAL RULES FOR LNG FUELING FACILITIES

16 TAC §§14.2304, 14.2310, 14.2313, 14.2314, 14.2319

The Commission adopts the amendments and new rule under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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16 TAC §§14.2307, 14.2316, 14.2322, 14.2325, 14.2328

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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. PIPING SYSTEMS AND COMPONENTS FOR ALL STATIONARY LNG INSTALLATIONS

16 TAC §§14.2404, 14.2407, 14.2410, 14.2413, 14.2419, 14.2422, 14.2425, 14.2428, 14.2431, 14.2434, 14.2437, 14.2440

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of

nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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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Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 475-1295



16 TAC §14.2416

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. INSTRUMENTATION AND ELECTRICAL SERVICES

16 TAC §§14.2501, 14.2504, 14.2507, 14.2510, 14.2513, 14.2516

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. ENGINE FUEL SYSTEMS

16 TAC §§14.2604, 14.2610, 14.2619, 14.2625, 14.2634, 14.2637, 14.2640

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of

nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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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16 TAC §§14.2607, 14.2613, 14.2616, 14.2622, 14.2628, 14.2631

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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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Haley Cochran

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SUBCHAPTER H. LNG TRANSPORTS

16 TAC §§14.2701, 14.2704, 14.2705, 14.2707, 14.2710, 14.2737, 14.2746

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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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16 TAC §14.2749

The Commission adopts the repeal under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a

person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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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Haley Cochran

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SUBCHAPTER I. ADOPTION BY REFERENCE OF NFPA 52 (VEHICULAR GASEOUS FUEL SYSTEMS CODE)

16 TAC §§14.2801 - 14.2803

The Commission adopts the new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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. ADOPTION BY REFERENCE OF NFPA 59A (STANDARD FOR THE PRODUCTION, STORAGE, AND HANDLING OF LIQUEFIED NATURAL GAS (LNG))

16 TAC §§14.2901 - 14.2903

The Commission adopts the new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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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Haley Cochran

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CHAPTER 15. ALTERNATIVE FUELS PROGRAMS

16 TAC §§15.1 - 15.13

The Railroad Commission of Texas adopts the repeal of 16 Texas Administrative Code Chapter 15, relating to Alternative Fuels Programs, specifically §§15.1 - 15.13, relating to Purpose; Definitions; Establishment and Duration; Availability of Funds; Eligibility; Application; Conditions of Receipt of Rebate or Incen-

tive; Selection of Equipment and Installer; Rebate or Incentive Amount; Minimum Efficiency Factor; or Performance Standard; Verification, Safety, Disallowance, and Refund; Assignment of Rebate or Incentive; Compliance; and Complaints, without changes to the proposed text as published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7921). The repeals are adopted pursuant to House Bill 1818, 85th Legislative Session (2017) which repealed the statute authorizing the Alternative Fuels Research and Education program.

Texas Natural Resources Code Chapter 113, Subchapter I, provided authority to create the Alternative Fuels Research and Education Program. In 2013, House Bill 7 (83rd Legislature) repealed Texas Natural Resources Code, Chapter 113, Subchapter I, and moved the authority for the program to Texas Natural Resources Code §81.0681, which read (in part): "The commission shall adopt all necessary rules relating to activities regarding the use of alternative fuels that are or have the potential to be effective in improving the air quality, energy security, or economy of this state." Finally, House Bill 1818 of the 85th Legislature repealed §81.0681, thus eliminating the Alternative Fuels Research and Education Program.

The Commission received one comment from CenterPoint Energy in support of the proposed repeals.

The Commission adopts the repeals pursuant to House Bill 1818 (85th Legislature, 2017). House Bill 1818 repealed Nat. Res. Code §81.0681 which authorized the Commission to adopt all necessary rules relating to activities regarding the use of alternative fuels that are or have the potential to be effective in improving the air quality, energy security, or economy of this state.

Statutory authority: Texas Natural Resources Code, §81.0681.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81.

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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Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 475-1295



PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER B. FEES AND PAYMENTS

16 TAC §§33.22, 33.27, 33.30 - 33.32, 33.37 - 33.39

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts new rules in Chapter 33, Licensing, Subchapter B: §§33.22, 33.27, and 33.30 - 33.32, and 33.37 - 33.39 without changes to the text as published in the December 4,

2020, issue of the *Texas Register* (45 TexReg 8683). The title of Subchapter B is also changed from "License and Permit Surcharges" to "Fees and Payments" to more accurately describe its contents.

No comments were received.

In 2019, the Texas Legislature adopted House Bill 1545, which made significant amendments throughout the Alcoholic Beverage Code (Code). HB 1545 further required the commission to adopt a variety of new rules and amend others to implement its provisions. To adopt the necessary new and amended rules, the commission either has or will make changes to every subchapter in existing Chapter 33, Licensing. With these proposed rules and other related rulemaking packages, the commission is taking the opportunity presented by the extensive necessary changes to Chapter 33 to streamline and reorganize Chapter 33 to be more intuitive and user-friendly. The majority of the amendments are not intended to make substantive changes. Rather, they move rule provisions to more appropriate places and make other editorial changes for accuracy and consistency.

The rules are adopted pursuant to the commission's general powers and duties under §5.31 of the Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202100403

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Effective date: February 17, 2021

Proposal publication date: December 4, 2020

For further information, please call: (512) 487-9905



CHAPTER 45. MARKETING PRACTICES

SUBCHAPTER F. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.103

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts amended 16 TAC §45.103, On-Premises Promotions, without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8685). The rule will not be republished.

No comments were received.

Tex. Gov't Code §2001.0039 requires the agency to review its existing rules every four years and determine whether to readopt, readopt with amendments, or repeal the rule. As part of this regular review, the agency has reviewed §45.103 of its rules, which relates to and restricts the promotion of alcoholic beverages for on-site consumption. The reasons for the initial adoption of the rule continue to exist because it remains in the best interest of the state of Texas and its citizens to regulate promotions to discourage overconsumption of alcoholic beverages. However, amendments adopted will:

- allow tickets to certain charity events to include more than two alcoholic beverages in the price of a ticket;
- allow Public Entertainment Facilities, such as sports arenas, to sell special tickets or passes that include more than two alcoholic beverages in the price of the ticket or pass; and
- reinforce the legal duty of the seller and server of alcoholic beverages to refuse to serve an intoxicated or underage individual, regardless of the number of alcoholic beverages included with a ticket or pass held by that person.

The amendments are adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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 Shana Horton
 Rules Attorney
 Texas Alcoholic Beverage Commission
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 For further information, please call: (512) 487-9905



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

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

SUBCHAPTER N. PUBLIC ACCESS TO COURSE INFORMATION

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 4, Subchapter N, §4.227, Public Access to Course Information. Additionally, the Coordinating Board adopts the repeal of §4.229, concerning Public Access to Course Information without changes to the proposed text as published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7923) and will not be republished.

Specifically, the adopted amendment removes §4.227(11) as corresponding §4.229 is adopted for repeal. The information in those sections duplicated the details regarding required internet access to work-study information outlined in §22.129(f) and Texas Education Code §56.080.

Specifically, the adopted repeal eliminates duplicate language regarding required internet access to work-study information outlined in §22.129(f) and Texas Education Code §56.080.

No comments were received regarding the adoption of the amendment or repeal.

19 TAC §4.227

The amendment is adopted under the Texas Education Code, §§56.077 and 56.080, which provides the Coordinating Board with the authority to adopt rules for the administration of the Texas College Work-Study Program.

The adopted amendment affects Texas Education Code, §§56.077 and 56.080.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202100409
 Nichole Bunker-Henderson
 General Counsel
 Texas Higher Education Coordinating Board
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 For further information, please call: (512) 427-6527



19 TAC §4.229

The repeal is adopted under the Texas Education Code, §§56.077 and 56.080, which provides the Coordinating Board with the authority to adopt rules for the administration of the Texas College Work-Study Program.

The adopted repeal affects Texas Education Code, §§56.077 and 56.080.

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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 Nichole Bunker-Henderson
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CHAPTER 13. FINANCIAL PLANNING SUBCHAPTER G. RESTRICTED RESEARCH EXPENDITURES

19 TAC §13.122, §13.126

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 13, Subchapter G, §13.122 and §13.126, concerning the Restricted Research Expenditures, without changes to the proposed text as published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7924). The rules will not be republished.

Specifically, the adopted amendment to §13.122 clarifies the definitions of terms used for determining restricted research expenditures, and the adopted amendment to §13.126 clarifies reporting requirements of restricted research expenditures.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the Texas Education Code, Sections 62.091 - 61.098, which provides the Coordinating Board with the authority to administer the Texas Comprehensive Research Fund and to adopt rules regarding standards and accounting methods for determining the amount of restricted research funds expended in a state fiscal year.

The adopted amendments affect Texas Education Code, Chapter 62, Subchapter E, Texas Comprehensive Research Fund, Subchapter F-1, Core Research Support Fund, and Subchapter G, National Research University Fund.

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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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6206



SUBCHAPTER K. TECHNOLOGY WORKFORCE DEVELOPMENT GRANT PROGRAM

19 TAC §§13.190 - 13.197

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 13, Subchapter K, §13.190, §13.191, §13.192, §13.193, §13.194, §13.195, §13.196 and §13.197, concerning the Technology Workforce Development Grant Program (TWD Grant Program), without changes to the proposed text as published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7926) and will not be republished.

Specifically, this adopted repeal strikes out the entire Subchapter K. The TWD Grant Program was created by the 77th Texas Legislature, Regular Session, 2001, and originally codified as Texas Education Code, Chapter 51, Subchapter V (Technology Workforce Development) (Act of May 3, 2001, 77th Leg., R.S., Ch. 146, § 1, 2001 Tex. Gen. Laws 297-300) (S.B. 353). In 2003, these provisions were relettered and renumbered as Chapter 51, Subchapter X, §§ 51.851-51.860 (Act of May 20, 2003, 78th Leg., R.S., Ch. 1275, § 2(26), 2003 Tex. Gen. Laws 4141) (H.B. 3506).

The 82nd Texas Legislature first repealed Texas Education Code § 51.859, with an effective date of September 1, 2013 (Act of May 27, 2011, 82nd Leg., R.S., Ch. 1049, § 9.01(b)(1), 2011 Tex. Gen. Laws 2701) (S.B. 5). The 83rd Texas Legislature then

repealed Texas Education Code Chapter 51, Subchapter X, in its entirety, with an effective date of September 1, 2013 (Act of May 26, 2013, 83rd Leg., R.S., Ch. 1155, § 62(2), 2013 Tex. Gen. Laws 2876 (S.B. 215).

Because the underlying statutory authority for the TWD Grant Program has been repealed, the Coordinating Board adopts the repeal of its rules.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under the Act of May 27, 2011, 82nd Leg., R.S., Ch. 1049, § 9.01(b)(1), 2011 Tex. Gen. Laws 2701) (S.B. 5). Act of May 26, 2013, 83rd Leg., R.S., Ch. 1155, § 62(2), 2013 Tex. Gen. Laws 2876 (S.B. 215).

The adopted repeal does not affect other provisions of law.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Nichole Bunker-Henderson
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Texas Higher Education Coordinating Board
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CHAPTER 17. RESOURCE PLANNING SUBCHAPTER L. FACILITIES AUDIT

19 TAC §17.113

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 17, Subchapter L, §17.113, Institutional Audit Cycle, without changes to the proposed text as published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8236) and will not be republished.

Texas Education Code §61.0583 requires the Texas Higher Education Coordinating Board (THECB) to conduct a comprehensive audit of educational and general facilities on the campuses of public senior colleges and universities and the Texas State Technical College System to verify the accuracy of the facilities inventory for each of those institutions. 19 TAC §17.113(b) requires that each institution be audited a minimum of once each five years.

Since the timeline requirement was adopted by rule and not specified in the Education Code, by changing §17.113, the THECB gains flexibility in the audit timeline for cases of natural disaster or other circumstances resulting in a need for prioritizing audits at an institution during a certain fiscal year. This change does not amend the rule text limiting these audits to not more than once every five years except upon specific request as required under §17.113.

Section 17.113(b) is amended to remove the requirement that institutions must be audited a minimum of once each five years to allow flexibility in the scheduling of the audits.

Section 17.113(c) is amended due to division name changes and provides that staff of the Coordinating Board will publish the schedule rather than specifying a division.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under the Texas Education Code, Section 61.0583, which provides the Coordinating Board with the authority to periodically conduct a comprehensive audit of all educational and general facilities on the campuses of public senior colleges and universities and the Texas State Technical College System and Texas Education Code, Section 61.027 which authorizes the Coordinating Board to adopt rules to effectuate the provisions of the Chapter.

The adopted amendment affects Texas Education Code §61.0583.

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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Nichole Bunker-Henderson
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Texas Higher Education Coordinating Board
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CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §22.1

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter A, §22.1, General Provisions, without changes to the proposed text as published in the November 6, 2020, issue of *Texas Register* (45 TexReg 7927). The rules will not be republished.

Specifically, Texas Education Code (TEC), §61.027, authorizes the Coordinating Board to adopt rules to effectuate the provisions of TEC Chapter 61, including §61.051(a)(5) regarding the administration of financial aid programs. The amendments are adopted to provide institutions with greater clarity regarding defined financial aid terms throughout Chapter 22 and align the use of state and federal financial aid terms. Section 22.1 is amended to add the phrase "academic year" as a defined term throughout the chapter to align the use of the phrase in state financial aid programs with its use in federal financial aid programs. Remaining definitions are renumbered accordingly.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code (TEC), §61.027, which authorizes the Coordinating Board to

adopt rules to effectuate the provisions of TEC Chapter 61, including §61.051(a)(5) regarding the administration of financial aid programs.

The adopted amendment affects Texas Administrative Code, Chapter 22.

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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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6365



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.6

Introduction. The Texas Board of Nursing (Board) adopts amendments to §211.6, relating to Committees of the Board, without changes to the proposed text published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8962). The rule will not be republished.

Reasoned Justification. Pursuant to the Government Code §2001.034, the Board is authorized to adopt rules on an emergency basis if the Board finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of the rule on fewer than 30 days' notice. Under the Board's current rules, a quorum of the thirteen-member Board is required to convene in order to deliberate and vote on the adoption of emergency rules. Coordinating the appearance of a quorum of the Board on short notice can cause delay in situations that require flexibility, fluidity, and a rapid response.

The adopted amendments authorize the Eligibility and Disciplinary Committee (Committee) of the Board to convene and consider and approve the adoption of emergency rules. The Committee is a standing committee comprised of three members of the Board, one consumer member and two nurse members. Because Committee members are pre-assigned to serve on the Committee in three month intervals, convening the three-member Committee, as opposed to a quorum of the full Board, is less likely to cause delay in the adoption of rules under emergency conditions. The conditions of the Government Code §2001.034 would still be required to be met in order for the Committee to consider the adoption of emergency rules.

How the Section Will Function. Adopted §211.6(b)(3)(ii) authorizes the Eligibility and Disciplinary Committee to approve the adoption of rules on an emergency basis pursuant to Tex. Gov't Code §2001.034.

Public Comment. The public comment period closed on January 18, 2021. 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 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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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Jena Abel

Deputy General Counsel

Texas Board of Nursing

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For further information, please call: (512) 305-6822



CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.1

Introduction. The Texas Board of Nursing (Board) adopts amendments to §213.1, relating to Definitions, without changes to the proposed text published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8963) and will not be republished.

Reasoned Justification. The adopted amendments to §213.1 make non-substantive changes to the section in order to update outdated references to the Texas Board of Nurse Examiners.

How the Section Will Function. Adopted §213.1(2) defines *address of record* as the address of each licensee as provided to the Board of Nursing (as required by Board rules relating to Change of Name and/or Address) and currently found in §217.7 of this title (relating to Change of Name and/or Address). Adopted §213.1(8) defines the *Board* as the Board of Nursing appointed pursuant to Texas Occupations Code Annotated §301.051. Adopted §213.2(17) defines *Executive Director* as the executive director of the Board of Nursing. Adopted §213.1(28) defines *party* as a person who holds a license issued by the Board of Nursing or multistate licensure privilege, a person who seeks to obtain, retain, modify his or her license, or a multistate licensure privilege, or the Board of Nursing.

Public Comment. The public comment period closed on January 18, 2021. 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 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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Deputy General Counsel

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22 TAC §213.20

Introduction. The Texas Board of Nursing (Board) adopts amendments to §213.20, relating to Informal Proceedings and Alternative Dispute Resolution (ADR), without changes to the proposed text published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8964). The rule will not be republished.

Reasoned Justification. The adopted amendments to §213.20 are necessary to correct outdated references to the *Board of Nurse Examiners* within the text of the rule.

How the Section Will Function. The references to *Board of Nurse Examiners* in §213.20(h)(1)(C)(iv) and §213.20(h)(3) have been replaced with references to the *Board of Nursing*.

Public Comment. The public comment period closed on January 18, 2021. 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 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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Jena Abel

Deputy General Counsel

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For further information, please call: (512) 228-1862



CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §215.2

Introduction. The Texas Board of Nursing (Board) adopts amendments to §215.2, relating to Definitions, without changes to the proposed text published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8965). The rule will not be republished.

Reasoned Justification. Minimum examination pass rates are required for a nursing education program's continued approval status. Examination pass rates are determined based upon a program's examination year. The current examination year for Texas professional nursing education programs is October 1 - September 30. This is a different time period than the examination year for Texas vocational nursing education programs, which is based on the calendar year (January 1 - December 31). The adopted rule amendments align the professional nursing education program exam year with the vocational nursing education program exam year, as well as with the exam year utilized by most accreditors and other boards of nursing.

The current examination year for Texas professional nursing education programs causes inconsistencies in reported NCLEX pass rates, since education programs have different academic years and graduation schedules. The National Council State Boards of Nursing (NCSBN) reports NCLEX state data based upon the calendar year, and many non-education settings require calendar year information. Accreditation agencies usually base their data on the calendar year, as well. Aligning program exam years would also permit the Board to calculate and report pass rates for all nursing education programs at the same time.

The Board distributed a survey, through NCSBN, to other member boards on August 14, 2020. Thirty-four (34) member boards responded to the survey. Eighteen percent (18%) of the responding member boards indicated their examination year was an academic year (one with a specific beginning and ending other than the calendar year); seventy-four percent (74%) indicated their examination year was the calendar year; and eight percent (8%) indicated they used another measure ("other"). The Board also consulted nursing accreditation agencies and other state agencies in Texas to determine if changing the exam year for Texas professional nursing education programs would result in unforeseen consequences or concerns. None were identified.

How the Section Will Function. Adopted §215.2(20) defines the examination year for a professional nursing education program, for the purpose of determining its annual NCLEX-RN® examination pass rate, as beginning January 1 and ending December 31.

Public Comment. The public comment period closed on January 18, 2021. The Board did not receive any comments on the proposal.

Statutory Authority.

The amendments are adopted under the authority of the Occupations Code §301.157 and §301.151.

Section 301.157(b) provides that the Board shall: (1) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under Chapter 301, as follows: (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and (B) a program conducted by a hospital; (2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; (3) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; (4) approve schools of nursing and educational programs that meet the Board's requirements; (5) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and (6) deny or withdraw approval from a school of nursing or educational program that: (A) fails to meet the prescribed course of study or other standard under which it sought approval by the Board; (B) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under Subdivision (5) under which it was approved or sought approval by the board; or (C) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

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

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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Jena Abel

Deputy General Counsel

Texas Board of Nursing

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CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.23

Introduction. The Texas Board of Nursing (Board) adopts amendments to §217.23, relating to Balance Billing Dispute Resolution, with changes to the proposed text published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8454). The rule will be republished.

Reasoned Justification. The amendments are being adopted under the authority of the Insurance Code §752.0003 and §1467.003 and the Occupations Code §301.151 and implement the new requirements of the Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, 1579.111 and the Insurance Code Chapter 1467, effectuated by the passage of Senate Bill (SB) 1264 during the 86th Legislative Session, effective September 1, 2019. In order to protect consumers, SB 1264 prohibits balance billing by many out of network providers, except in a narrow set of circumstances. Additionally, SB 1264 authorizes a new dispute resolution process for claim disputes between out of network providers and health benefit plan issuers and administrators.

The balance billing protections provided by SB 1264 generally apply to enrollees of health benefit plans offered by insurers and health maintenance organizations regulated by the Texas Department of Insurance (Department), as well as the Texas Employees Group, the Texas Public School Employees Group, and the Texas School Employees Uniform Group. The provisions of the bill apply to health care and medical services and supplies provided on or after January 1, 2020.

Under SB 1264, an out of network provider is prohibited from seeking payment for a balance bill from an enrollee *unless* the provider provides the enrollee with a written disclosure identifying the projected amounts for which the enrollee may be responsible and the circumstances under which the enrollee may be responsible for those amounts *and* the enrollee elects, in writing, to receive the health care or medical service or supply anyway. This exception only applies in non-emergencies when an enrollee elects to receive covered health care or medical services or supplies from a facility-based provider, diagnostic imaging provider, or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider or is provided in connection with a health care or medical service or supply that is provided by a participating provider.

The Department, under the authority of SB 1264, adopted rules to implement this exception to the balance billing prohibitions set forth in the Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111. These rules took effect on June 25, 2020 (45 TexReg 4204).

Under the Department's rules, an enrollee's election to receive health care or a medical service or supply is only valid if the enrollee has a meaningful choice between an in network provider and an out of network provider; the enrollee was not coerced by another provider or his/her health benefit plan into selecting the out of network provider; and the enrollee signs a notice and disclosure statement at least ten business days before the service or supply is provided acknowledging that the enrollee may be liable for a balance bill and chooses to proceed with the service or supply anyway. Only an out of network provider that chooses to balance bill an enrollee is required to provide a notice and disclosure statement to the enrollee. The out of network provider may choose to participate in the claim dispute resolution process authorized by SB 1264 instead of balance billing an enrollee. The Department also adopted a notice and disclosure statement that

must be filled out by the out of network provider and given to the enrollee if the provider chooses to engage in balance billing. In light of the many changes made by SB 1264, the provisions of the Board's current rule are now obsolete. The adopted amendments are necessary to implement the new requirements of SB 1264 and mirror the Department's adopted rules.

Changes as Adopted. The Board has made a minor editorial change to the text of the rule as adopted in response to comments. The word "facility" has been removed from subsection (d).

How the Section Will Function. The title of the section is adopted to read "Balance Billing Notice and Disclosure Requirements".

Adopted §217.23(a) identifies the purpose of the section, which is to implement the requirements of the Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111 and the Insurance Code Chapter 1467 and notify licensees of their responsibilities under those sections.

Adopted §217.23(b) provides the definitions for terms used throughout the section and describes the applicability of the section. Under the adopted rule, the section only applies to a covered non-emergency health care or medical service or supply provided on or after January 1, 2020, by a facility based provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider; or a diagnostic imaging provider or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided in connection with a health care or medical service or supply provided by a participating provider. Further, the adopted subsection makes it clear that the section applies only to providers that are subject to the Board's jurisdiction. For purposes of this rule, this includes an out of network licensee provider that provides non-emergency health care or medical services or supplies, diagnostic imaging services, or laboratory services at an in network health care facility or in connection with a health care or medical service or supply provided by a participating provider.

Adopted §217.23(c) sets forth the responsibilities of such licensee providers related to balance billing. First, consistent with the rules adopted by the Department, an out of network provider may not balance bill an enrollee receiving a non-emergency health care or medical service or supply, and the enrollee does not have financial responsibility for a balance bill, unless the enrollee elects to obtain the service or supply from the out of network provider knowing that the provider is out of network and the enrollee may be financially responsible for a balance bill. An enrollee's legal representative or guardian may elect on behalf of an enrollee.

Second, an enrollee elects to obtain a service or supply only if the enrollee has a meaningful choice between a participating provider for a health benefit plan issuer or administrator and an out of network provider; the enrollee is not coerced by a provider or health benefit plan issuer or administrator when making the election; and the out of network provider or the agent or assignee of the provider provides written notice and disclosure to the enrollee and obtains the enrollee's written consent, as specified in the later provisions of the rule. Under the adopted rule, a meaningful choice does not exist for an enrollee if an out of network provider was selected for or assigned to an enrollee by another provider or health benefit plan issuer or administrator. Further, a

provider engages in coercion if the provider charges or attempts to charge a nonrefundable fee, deposit, or cancellation fee for the service or supply prior to the enrollee's election.

Third, if an out of network provider elects to balance bill an enrollee rather than participate in the claim dispute resolution process authorized by the Insurance Code Chapter 1467, the out of network provider or agent or assignee of the provider must provide the enrollee with the notice and disclosure statement specified in the later provisions of this rule prior to scheduling the non-emergency health care or medical service or supply. To be effective, the notice and disclosure statement must be signed and dated by the enrollee no less than 10 business days before the date the service or supply is performed or provided. The enrollee may rescind acceptance within five business days from the date the notice and disclosure statement was signed, as explained in the notice and disclosure statement form referenced in the later provisions of this rule.

Fourth, if the medical service or supply is provided and a balance bill is sent to the enrollee, each out of network provider, or the provider's agent or assignee, must maintain a copy of the notice and disclosure statement, signed and dated by the enrollee, for four years. The provider must provide the enrollee with a copy of the signed notice and disclosure statement on the same date the statement is received by the provider.

Finally, the Department adopted Form AH025 as the notice and disclosure statement to be used by out of network providers subject to the requirements of SB 1264. The Board adopts this form by reference. Form AH025 may be accessed on the Department's website at www.tdi.texas.gov/forms. The notice and disclosure statement may not be modified, including its format or font size, and must be presented to an enrollee as a standalone document and cannot be incorporated into any other document.

A provider who seeks and obtains an enrollee's signature on a notice and disclosure statement is not eligible to participate in the claim dispute resolution process authorized by the Insurance Code Chapter 1467. This prohibition does not apply, however, if the enrollee's election is defective or rescinded by the enrollee.

Adopted §217.23(d) relates to the Board's complaint investigation and resolution. The Board is authorized under the Insurance Code §752.0003 to take disciplinary action against a licensee that violates a law that prohibits the licensee from billing an insured, participant, or enrollee in an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition. Licensees may also be subject to additional consequences pursuant to the Insurance Code §752.0002. Complaints that do not involve delayed health care or medical care shall be assigned a Priority 4 status, as described in §213.13 of this title (relating to Complaint Investigation and Disposition). After its investigation has concluded, if the Board determines that a licensee has engaged in improper billing practices or bad faith participation or has committed a violation of the Nursing Practice Act, the Insurance Code Chapter 1467, or other applicable law, the Board will impose appropriate disciplinary action.

Public Comment. The public comment period closed on December 28, 2020. The Board received written comments from Quest Diagnostics and the Texas Medical Association.

Summary of Comments Received.

General Comment

A commenter representing Quest Diagnostics states that it applauds the state's focus on the important issue of surprise and balance billing, but proposes minor amendments to the regulations to make them even stronger and effective. Specifically, the commenter recommends setting a minimum required payment to out-of-network providers of 150% of the Medicare rate. The commenter states that, while it is important to protect patients from receiving surprise bills, it is also important to ensure that providers, particularly clinical labs, receive fair and reasonable reimbursement for the services they perform.

Agency Response to Comment: The Board declines to make the requested change. The Board does not find that SB 1264 grants it statutory authority to establish required payments for out-of-network providers.

§217.23(d)

A commenter representing the Texas Medical Association states that the language of subsection (d) closely tracks the language of the Insurance Code §752.0003, except for the addition of the word "facility" in the subsection. The commenter requests that the Board clarify the basis and intent of this additional term.

Agency Response to Comment: The Board has removed the term "facility" from the rule text as adopted.

Statutory Authority.

The amendments are adopted under the authority of the Insurance Code §752.0003(c) and §1467.003 and the Occupations Code §301.151.

Section 752.0003 (a) provides that an appropriate regulatory agency that licenses, certifies, or otherwise authorizes a physician, health care practitioner, health care facility, or other health care provider to practice or operate in this state may take disciplinary action against the physician, practitioner, facility, or provider if the physician, practitioner, facility, or provider violates a law that prohibits the physician, practitioner, facility, or provider from billing an insured, participant, or enrollee in an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition. Section 752.0003(c) provides that a regulatory agency described by subsection (a) or the Commissioner may adopt rules as necessary to implement this section.

Section 1467.003(a) provides that the Commissioner, the Texas Medical Board, and any other appropriate regulatory agency shall adopt rules as necessary to implement their respective powers and duties under this chapter.

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.

§217.23. *Balance Billing Notice and Disclosure Requirements.*

(a) Purpose. The purpose of this section is to implement the requirements of the Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111 and the Insurance Code Chapter 1467 and notify licensees of their responsibilities under those sections.

(b) Definitions and Applicability of Section.

(1) Definitions. Terms defined in the Insurance Code §1467.001 have the same meanings when used in this section, unless the context clearly indicates otherwise. Additionally, for purposes of this section, a "balance bill" is a bill for an amount greater than an applicable copayment, coinsurance, and deductible under an enrollee's health benefit plan, as specified in the Insurance Code §§1271.157(c), 1271.158(c), 1301.164(c), 1301.165(c), 1551.229(c), 1551.230(c), 1575.172(c), 1575.173(c), 1579.110(c), or 1579.111(c).

(2) Applicability. This section only applies to a covered non-emergency health care or medical service or supply provided on or after January 1, 2020, by:

(A) a facility based provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider; or

(B) a diagnostic imaging provider or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided in connection with a health care or medical service or supply provided by a participating provider. Further, this section is limited to providers that are subject to the Board's jurisdiction.

(c) Responsibilities of Licensee.

(1) An out of network provider may not balance bill an enrollee receiving a non-emergency health care or medical service or supply, and the enrollee does not have financial responsibility for a balance bill, unless the enrollee elects to obtain the service or supply from the out of network provider knowing that the provider is out of network and the enrollee may be financially responsible for a balance bill. An enrollee's legal representative or guardian may elect on behalf of an enrollee.

(2) An enrollee elects to obtain a service or supply only if:

(A) the enrollee has a meaningful choice between a participating provider for a health benefit plan issuer or administrator and an out of network provider. No meaningful choice exists if an out of network provider was selected for or assigned to an enrollee by another provider or health benefit plan issuer or administrator;

(B) the enrollee is not coerced by a provider or health benefit plan issuer or administrator when making the election. A provider engages in coercion if the provider charges or attempts to charge a nonrefundable fee, deposit, or cancellation fee for the service or supply prior to the enrollee's election; and

(C) the out of network provider or the agent or assignee of the provider provides written notice and disclosure to the enrollee and obtains the enrollee's written consent, as specified in paragraph (3) of this subsection.

(3) If an out of network provider elects to balance bill an enrollee rather than participate in the claim dispute resolution process authorized by the Insurance Code Chapter 1467, the out of network provider or agent or assignee of the provider must provide the enrollee with the notice and disclosure statement specified in subparagraph (B) of this paragraph prior to scheduling the non-emergency health care or medical service or supply. To be effective, the notice and disclosure statement must be signed and dated by the enrollee no less than 10 business days before the date the service or supply is performed or provided. The enrollee may rescind acceptance within five business days from the date the notice and disclosure statement was signed, as explained in the notice and disclosure statement form referenced in subparagraph (B) of this paragraph.

(A) Each out of network provider, or the provider's agent or assignee, must maintain a copy of the notice and disclosure

statement, signed and dated by the enrollee, for four years if the medical service or supply is provided and a balance bill is sent to the enrollee. The provider must provide the enrollee with a copy of the signed notice and disclosure statement on the same date the statement is received by the provider.

(B) The Texas Department of Insurance has adopted Form AH025 as the notice and disclosure statement to be used under this subsection. The notice and disclosure statement may not be modified, including its format or font size, and must be presented to an enrollee as a standalone document and not incorporated into any other document. The form is available from the Texas Department of Insurance by accessing its website at www.tdi.texas.gov/forms.

(4) A provider who seeks and obtains an enrollee's signature on a notice and disclosure statement under this subsection is not eligible to participate in the claim dispute resolution process authorized by the Insurance Code Chapter 1467. This prohibition does not apply if the election is defective or rescinded by the enrollee under paragraph (3) of this subsection.

(d) Complaint Investigation and Resolution. The Board is authorized under the Insurance Code §752.0003 to take disciplinary action against a licensee that violates a law that prohibits the licensee from billing an insured, participant, or enrollee in an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition. Licensees may also be subject to additional consequences pursuant to the Insurance Code §752.0002. Complaints that do not involve delayed health care or medical care shall be assigned a Priority 4 status, as described in §213.13 of this title (relating to Complaint Investigation and Disposition). After investigation, if the Board determines that a licensee has engaged in improper billing practices or bad faith participation or has committed a violation of the Nursing Practice Act, the Insurance Code Chapter 1467, or other applicable law, the Board will impose appropriate disciplinary action.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jena Abel

Deputy General Counsel

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CHAPTER 222. ADVANCED PRACTICE REGISTERED NURSES WITH PRESCRIPTIVE AUTHORITY

22 TAC §222.4

Introduction. The Texas Board of Nursing (Board) adopts amendments to §222.4, relating to Minimum Standards for Prescribing or Ordering Drugs and Devices, without changes to the proposed text published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8966). The rule will not be republished.

Reasoned Justification. House Bill (HB) 2174, enacted during the 86th Legislative Session, requires prescriptions for controlled substances to be issued electronically after January 1, 2021, unless certain prescribed exceptions apply. One of the specified statutory exceptions provides for a waiver process. Pursuant to the Health & Safety Code §481.0755(a)(9) and §481.0756, a prescriber may issue a non-electronic prescription for a controlled substance if the prescriber has received a waiver from the prescriber's respective licensing agency. The waiver is valid for one year after issuance. A prescriber may re-apply for a subsequent waiver not earlier than 30 days prior to the expiration of the waiver, so long as circumstances that necessitated the waiver continue. The adopted amendments are necessary to implement the Board's waiver process under HB 2174.

Pursuant to the Health & Safety Code §481.0756(d), the Texas Pharmacy Board must adopt rules establishing eligibility for a waiver, including economic hardship; technological limitations not reasonably within the control of the prescriber; or other exceptional circumstances demonstrated by the prescriber. Further, pursuant to §481.0756(e), the Board is required to adopt rules for the granting of waivers that are consistent with those rules adopted by the Texas Pharmacy Board. The Board has worked cooperatively with the Texas Pharmacy Board to ensure that the Board's adopted rules are consistent with the amendments proposed (45 TexReg 6949) and adopted by the Texas Pharmacy Board (45 TexReg 8866).

How the Section Will Function. In general, adopted §222.4(c) sets forth the Board's waiver process from electronic prescribing requirements.

Adopted §222.4(c)(1) makes clear that licensee prescribers must issue their prescriptions electronically beginning January 1, 2021, unless one of the specified circumstances in the Health & Safety Code §481.0755(a) applies.

Under adopted §222.4(c)(2), a licensee prescriber may request a waiver from electronic prescribing requirements by submitting a waiver request to the Board that demonstrates the circumstances necessitating a waiver from the electronic prescribing requirements, including: (A) economic hardship, taking into account factors including: (i) any special situational factors affecting either the cost of compliance or ability to comply; (ii) the likely impact of compliance on profitability or viability; and (iii) the availability of measures that would mitigate the economic impact of compliance; (B) technological limitations not reasonably within the control of the licensee prescriber; and (C) other exceptional circumstances demonstrated in the waiver request.

Adopted §222.4(c)(3) limits the waiver to a one-year period, consistent with the Health & Safety Code §481.0756(f). If circumstances that originally necessitated the waiver continue beyond that time period, the rule permits the licensee prescriber to re-apply to the Board for a subsequent waiver no earlier than the 30th day prior to the expiration of the original waiver. This is also consistent with the limitations of §481.0756(f).

Public Comment. The public comment period closed on January 18, 2021. 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 and the Health & Safety Code §§481.075, 481.0755, and 481.0756.

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

Section 481.075(a) requires a practitioner who prescribes a controlled substance listed in Schedule II to, except as provided by Section 481.074(b-1) or 481.0755 or a rule adopted under Section 481.0761, record the prescription in an electronic prescription that includes the information required by this section.

Section 481.0755(a) provides that, notwithstanding Sections 481.074 and 481.075, a prescription for a controlled substance is not required to be issued electronically and may be issued in writing if the prescription is issued: (1) by a veterinarian; (2) in circumstances in which electronic prescribing is not available due to temporary technological or electronic failure, as prescribed by board rule; (3) by a practitioner to be dispensed by a pharmacy located outside this state, as prescribed by board rule; (4) when the prescriber and dispenser are in the same location or under the same license; (5) in circumstances in which necessary elements are not supported by the most recently implemented national data standard that facilitates electronic prescribing; (6) for a drug for which the United States Food and Drug Administration requires additional information in the prescription that is not possible with electronic prescribing; (7) for a non-patient-specific prescription pursuant to a standing order, approved protocol for drug therapy, collaborative drug management, or comprehensive medication management, in response to a public health emergency or in other circumstances in which the practitioner may issue a non-patient-specific prescription; (8) for a drug under a research protocol; (9) by a practitioner who has received a waiver under Section 481.0756 from the requirement to use electronic prescribing; (10) under circumstances in which the practitioner has the present ability to submit an electronic prescription but reasonably determines that it would be impractical for the patient to obtain the drugs prescribed under the electronic prescription in a timely manner and that a delay would adversely impact the patient's medical condition; or (11) before January 1, 2021.

Section 481.0756(a) provides that the appropriate regulatory agency that issued the license, certification, or registration to a prescriber is authorized to grant a prescriber a waiver from the electronic prescribing requirement under the provisions of this section. Section 481.0756(b) provides that the board shall convene an interagency workgroup that includes representatives of each regulatory agency that issues a license, certification, or registration to a prescriber. Section 481.0756(c) states that the work group described by Subsection (b) shall establish recommendations and standards for circumstances in which a waiver from the electronic prescribing requirement is appropriate and a process under which a prescriber may request and receive a waiver. Section 481.0756(d) provides that the board shall adopt rules establishing the eligibility for a waiver, including: (1) economic hardship; (2) technological limitations not reasonably within the control of the prescriber; or (3) other exceptional circumstances demonstrated by the prescriber. Section 481.0756(e) states that each regulatory agency that issues a license, certification, or registration to a prescriber shall adopt rules for the granting of waivers consistent with the board

rules adopted under Subsection (d). Section 481.0756(f) states that a waiver may be issued to a prescriber for a period of one year. A prescriber may reapply for a subsequent waiver not earlier than the 30th day before the date the waiver expires if the circumstances that necessitated the waiver continue.

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 27, 2021.

TRD-202100393

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: February 16, 2021

Proposal publication date: December 18, 2020

For further information, please call: (512) 305-6822



CHAPTER 223. FEES

22 TAC §223.1

Introduction. The Texas Board of Nursing (Board) adopts amendments to §223.1, concerning Fees, without changes to the proposed text published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8969) and will not be republished.

Reasoned Justification. On October 8, 2019, the Office of the Governor requested that occupational licensing agencies review their licensing rules and policies to identify areas where they could remove burdensome or unreasonable obstacles to licensure, specifically developing and implementing plans to reduce license application fees to 75% or less of the national average for equivalent or comparable occupations. In response, the Board reviewed the 2018 member profiles maintained by the National Council of State Boards of Nursing, which reports comprehensive, detailed fee information from responding boards of nursing. The profile revealed that the Board's current endorsement licensure fee is at 81% of the national fee average. The adopted amendments are necessary to reduce the Board's current endorsement fee from \$161 to \$125 in order to meet the Office of the Governor's request and maintain legislative budget requirements.

How the Section Will Function. Adopted §223.1(a)(2) sets the endorsement licensure fee at \$125.

Public Comment. The public comment period closed on January 18, 2021. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §301.151 and §301.155.

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

Section 301.155(a) provides that the Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering the Occupations Code Chapter 301. Further, §301.155(a) provides that the Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

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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Jena Abel

Deputy General Counsel

Texas Board of Nursing

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For further information, please call: (512) 305-6822



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 40. EPINEPHRINE AUTO-INJECTOR AND ANAPHYLAXIS POLICIES SUBCHAPTER D. MAINTENANCE AND ADMINISTRATION OF ASTHMA MEDICATION

25 TAC §§40.41 - 40.49

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts new §§40.41 - 40.49, concerning Maintenance and Administration of Asthma Medication. New §§40.44 - 40.47 are adopted with changes to the proposed text as published in the October 16, 2020, issue of the *Texas Register* (45 TexReg 7387) and will be republished. New §§40.41 - 40.43, 40.48, and 40.49 are adopted without changes to the proposed text as published in the October 16, 2020, issue of the *Texas Register* (45 TexReg 7387), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

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

DSHS convened the Stock Epinephrine Advisory Committee (SEAC) to request recommendations on how to integrate evidence-based practices in the rules while allowing flexibility for the school districts and schools. The SEAC recommended to

stock at least two doses of medication, the type of medication, the inclusion of the equipment to have on hand to administer the medication, and to report the administration of asthma medication to the DSHS Commissioner within 10 business days after administration of the medication. The new rules allow flexibility so that schools may develop policies specific to each campus, including campus geography and student population size.

COMMENTS

The 31-day comment period ended November 16, 2020.

During this period, DSHS received comments regarding the proposed rules from 10 commenters, including the Texas Nurses Association, the Texas Nurse Practitioners, the Texas School Nurses Organization, the Asthma 411 Consortium, the Texas Association of School Boards, Amerigroup, and 4 individuals. A summary of comments relating to the rules and DSHS's responses follows.

Comment: One commenter supported the rules.

Response: No changes were made in response to the comment. DSHS appreciates the comment.

Comment: One commenter did not support the rules. The commenter wanted parents to bring the child's prescribed inhaler to school.

Response: No changes were made in response to the comment. The rules implement H.B. 2243.

Comment: One commenter did not agree with the rules. The commenter did not want someone giving their child medication at the person's discretion. The commenter stated that not all schools have nurses, and non-licensed personnel may make decisions to medicate children without the knowledge of safe practice. The commenter stated that schools are moving away from teaching because the schools are focused on clothes, food, medicine, social work, and more.

Response: No changes were made in response to the comment. The rules implement H.B. 2243.

Comment: One commenter suggested having a physician's statement from the student's medical provider on file of an asthma diagnosis for the student.

Response: No changes were made in response to the comment. H.B. 2243 requires written notification from a parent or guardian of the student that the student has been diagnosed as having asthma and that the school nurse may administer prescription asthma medicine to the student.

Comment: One commenter asked if peak flow zone parameters will be utilized and which medical provider provides the standing order for the parameters.

Response: No changes were made in response to the comment. The peak flow zone parameters are addressed in the standing order.

Comment: One commenter asked if spacer usage for metered dose inhalers was considered and the cost of each inhaler.

Response: No changes were made in response to the comment. Adoption of an unassigned asthma medication policy is voluntary. If a school chooses to adopt a policy, they may utilize free or reduced cost asthma medication programs, if available.

Comment: Regarding §40.44(a)(2), one commenter suggested changing "must purchase" to "may purchase." The commenter

stated that in Texas Education Code, §38.208, purchasing unassigned asthma medication is permissive and not mandatory. The commenter stated that while the statute authorizes DSHS to regulate the amount of medication available at campuses, it does not mandate that campuses purchase minimum dosages.

Response: DSHS agrees and changes the language in §40.44(a)(2) to "must secure or obtain."

Comment: Regarding §40.44, one commenter appreciated the language "campuses must purchase or obtain" as the suggested minimum dosage of unassigned asthma medication.

Response: No change was made response to this comment, but DSHS changed the language in §40.44(a)(2) to state "must secure or obtain" in response to another comment.

Comment: Regarding §40.44(a)(2), one commenter stated that "subject to the availability of funding" does not match the language of the statute, which prohibits a district's policy from requiring purchases that would result in a negative fiscal impact on the district. As proposed, the rules might require the district to make minimum purchases of asthma medication that would result in a negative impact to the district because funds are technically available. The commenter recommended that the proposed rules reflect the statute in language and intent.

Response: DSHS disagrees and declines to revise the rule in response to this comment. The adoption of an asthma medication policy by a school district, open-enrollment charter school, or private school is voluntary in accordance with H.B. 2243. Campuses subject to a policy will need to obtain the minimum suggested dosage of asthma medication.

Comment: Regarding a campus or district policy, one commenter stated that §40.44(a)(2) and (b) and §40.45(a) reference campus adoption of policy. However, Texas Education Code §38.208 and §40.44(a) reference a school district. The commenter stated that school district policies are adopted by the board of trustees and not school campuses. The commenter requested the removal of references to campus adoption of policy and clarify application of the rules to districts and campuses.

Response: DSHS agrees with the comment and deletes references to campus adoption of policy and includes the school district, open-enrollment charter school, or private school in §40.44(a)(2) and (b) and §40.45(a). DSHS also deletes references to district policy in §40.45(d) and (e) and adds school district, open-enrollment charter school, or private school for clarity and consistency.

Comment: Regarding §40.44(c)(1), one commenter acknowledged that the requirement for a parent-reported asthma diagnosis is language included in H.B. 2243 and cannot be altered through the rulemaking process. The commenter suggested ongoing dialogue among stakeholders and recommended that administration of asthma medication by a school nurse be permitted "based on a medical history of asthma and/or a clinical presentation with signs and symptoms of asthma, which may include respiratory distress, dyspnea, or labored breathing, audible wheezing, tightness of chest, and persistent coughing."

Response: No changes were made in response to the comment. The rules implement H.B. 2243.

Comment: Regarding §40.44(c)(2), one commenter stated that the statute does not require or authorize the designation of a "campus department." The commenter recommended changing

the language to either district or campus departments to manage policy implementation.

Response: DSHS agrees that implementation will be at the campus level. DSHS changes the language in §40.44(c)(2) to "campus administrator."

Comment: Regarding §40.44(c)(2), one commenter recommended replacing "designated campus department" with "campus guidelines." The commenter stated that the statute does not require or authorize the designation of "campus department" and "campus department" is not terminology used in the Texas Education Code.

Response: DSHS agrees that implementation will be at the campus level. DSHS changes the language in §40.44(c)(2) to "campus administrator."

Comment: Regarding §40.44(c), one commenter stated that this section should require administrative guidelines to address whether the campus will conduct assessments. The commenter stated that according to §40.44(b), campuses may consider performing assessments. However, §40.44(c), requires the designated campus department to conduct an assessment as part of the coordination and management of the policy. The requirement to conduct an assessment falls outside the scope of the Texas Education Code.

Response: DSHS agrees and changes the language in §40.44(c)(2)(A) to "whether to conduct a review at the campus to determine the need for additional doses." DSHS also changes "assessment" to "review" at §40.44(b) and §40.45(b)(2).

Comment: Regarding §40.44(c), one commenter stated that this section includes details that are not board-level decisions, will differ for each campus within the district, and are likely to change frequently. The commenter stated that incorporating the details for all campuses in board policy will result in lengthy and unusable board policy. The commenter requested that the rules provide that each campus develop and plan for implementing the authorizing board-level policy.

Response: DSHS changes the language in §40.44(c) to campus "administrator," as the campus will implement the school district, open-enrollment charter school, and private school adopted policy.

Comment: Regarding §40.44(c)(2)(B), one commenter stated that flexibility to tailor training to local needs is critical. The commenter stated that they appreciate an opportunity to participate in a collaborative initiative to develop adaptable training tools to implement the legislation.

Response: No changes were made in response to the comment. DSHS appreciates the comment.

Comment: Regarding §40.44(c)(5), three commenters recommended changing "physician" to "authorized healthcare provider," as advanced practice nurse practitioners can prescribe unassigned epinephrine auto-injectors.

Response: DSHS agrees and makes the suggested change to §40.44(c)(5).

Comment: Regarding §40.44(d), one commenter suggested deleting this section, as it may confuse districts on their obligations to provide specific notice. The commenter stated that §40.48 requires that the district provide written notice of the unassigned asthma policy to a parent or guardian of each student enrolled in the district. School district policies and

administrative regulations are publicly available under the Texas Public Information Act. The commenter stated that this section may lead to confusion.

Response: DSHS disagrees and declines to revise the rule in response to this comment. The language allows flexibility in notifying parents and the public.

Comment: Regarding §40.45, one commenter stated that "subject to the availability of funding" does not match the language of the statute, which prohibits a district's policy from requiring purchases that would result in a negative fiscal impact on the district. As proposed, the rules might require the district to make minimum purchases of asthma medication that would result in a negative impact to the district because funds are technically available. The commenter recommended the proposed rules reflect the statute in language and intent.

Response: DSHS disagrees and declines to revise the rule in response to this comment. The adoption of an asthma medication policy is voluntary in accordance with H.B. 2243. Campuses subject to a policy will need to obtain the minimum suggested dosage of asthma medication.

Comment: Regarding §40.45(b)(2), one commenter stated that the proposed rule regarding the determination of additional doses is unclear. The commenter suggested clarifying the language as to what procedures districts must use before obtaining additional dosages.

Response: DSHS disagrees and declines to revise the rule in response to this comment. Per §40.45(b)(2), a campus may conduct a review to determine if additional doses are needed.

Comment: Regarding §40.45(e), one commenter appreciated the language.

Response: No changes were made in response to the comment. DSHS appreciates the comment.

Comment: One commenter asked about the disposal protocol and if all items will be single dose (inhalers) and/or single use/disposable nebulizer accessories.

Response: No changes were made in response to the comment. Per §40.45(e), expired and used medication and supplies must be disposed of in accordance with the manufacturer's guidelines and local policy of the school district, open-enrollment charter school or private school. Schools have the discretion to use single dose inhaler or single use/disposable nebulizer accessories, and that will be written in the school's standing order.

Comment: Regarding §40.46(a)(3), three commenters recommended changing "physician" to "authorized healthcare provider," as advanced practice nurse practitioners can prescribe unassigned epinephrine auto-injectors.

Response: DSHS agrees and makes the suggested change to §40.46(a)(3). DSHS removes "or prescribing" from §40.46(a)(2) and adds "authorized" to §40.47(b) for clarity and consistency.

Comment: Regarding §40.47, one commenter supports the reporting of unassigned asthma medication to the students' primary care physician. However, the commenter recognized that there are barriers to communication between schools and clinicians. The commenter recommended state level initiatives, such as the Texas Asthma Control Collaboration and the Texas Asthma Affinity Group, be considered as a resource to further develop best practices.

Response: No changes were made in response to the comment. DSHS appreciates the comment.

Comment: Regarding §40.47, one commenter stated that they support the reporting of unassigned asthma medication to DSHS. The commenter recognized that privacy protections are critical to data use. The commenter recommended state-level initiatives, such as the Texas Asthma Control Collaboration and the Texas Asthma Affinity Group, be engaged in developing data resources to support evidence-based pediatric asthma initiatives.

Response: No changes were made in response to the comment. DSHS appreciates the comment.

Comment: One commenter asked about the specific time frame and method of reporting to the child's parent and treating physician of the administration of unassigned asthma medication.

Response: No changes were made in response to the comment. Per §40.47, the campus must submit a report to the student's primary healthcare provider no later than the 10th business day after the date a school nurse administers asthma medication. Parents must be notified per the campus's medication policy.

Comment: Regarding §40.49, one commenter appreciated the protections found in H.B. 2243, but have some confusion related to the language in statute regarding supervision and delegation of asthma medication. The commenter noted that supervision and delegation are not included in the previous language. The commenter stated that the scope of Texas Education Code, §38.308(b-1) appears to limit the administration of asthma medication to the school nurse only. The commenter recommended including a statement in the rules to provide clarity.

Response: No changes were made in response to the comment. H.B. 2243 authorizes the school nurse to administer asthma medication and does not explicitly authorize the school nurse to delegate the administration of asthma medication.

Comment: One commenter asked if the proposal will include language regarding instances where the child has their prescribed medication in stock at schools and clarify that there is an option to do so. In those instances, will there be guidance on the specific medication utilized instead of the unassigned medication.

Response: No changes were made in response to the comment. The purpose of the rules for adoption is to implement H.B. 2243, which addresses unassigned asthma medication.

Comment: One commenter asked what section of the Texas Education Code provides coverage for the school nurse to administer an unassigned asthma medication.

Response: No changes were made in response to the comment. Texas Education Code, §38.215(a), addresses immunity from liability.

Comment: One commenter asked about the frequency of reviewing and auditing school policies.

Response: No changes were made in response to the comment. School districts, open-enrollment charter schools, and private schools should follow their normal review and revision schedules.

STATUTORY AUTHORITY

The new sections are authorized by Texas Education Code, Chapter 38, Subchapter E, which authorizes the Executive Commissioner of HHSC to adopt rules regarding the main-

tenance and administration of asthma medication in school districts, open-enrollment charter schools, and private schools, in consultation with the commissioner of education and with advice from the SEAC, as appropriate. The new sections are also authorized by Texas Government Code §531.0055, and Texas Health and Safety Code, §1001.075, which authorize 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.

§40.44. *Voluntary Unassigned Asthma Medication Policies.*

(a) A school district, open-enrollment charter school, or private school may voluntarily adopt and implement a written policy regarding the maintenance, administration, and disposal of asthma medication at each campus.

(1) If a written policy is adopted under this subchapter, the unassigned asthma medication policy must comply with Texas Education Code §38.208.

(2) Subject to the availability of funding, a school district, open-enrollment charter school, or private school that adopts such a policy must secure or obtain the suggested minimum dosage of unassigned asthma medication.

(b) In development of an unassigned asthma medication policy, a school district, open-enrollment charter school, or private school may consider performing a review to include:

(1) consultation with school nurses, the local school health advisory committee, local healthcare providers, or any department or organization involved with student well-being;

(2) campus geography; and

(3) student population size.

(c) If a school district, open-enrollment charter school, or private school voluntarily adopts an unassigned asthma medication policy, the policy must include:

(1) a process to obtain written authorization from a parent or guardian of the student that the student has been diagnosed as having asthma and stating that the school nurse may administer unassigned asthma medication to the student;

(2) a designated campus administrator to coordinate and manage policy implementation that includes:

(A) whether to conduct a review at the campus to determine the need for additional doses;

(B) training of school nurses;

(C) acquiring or purchasing, maintaining, storing, and using unassigned asthma medication, subject to available campus funding; and

(D) disposing of expired unassigned asthma medication;

(3) a list of school nurses who will be assigned to administer unassigned asthma medication;

(4) locations of unassigned asthma medication;

(5) procedures for notifying a parent, prescribing authorized healthcare provider, and the student's primary healthcare provider when unassigned asthma medication is administered; and

(6) a plan to replace, as soon as reasonably possible, any unassigned asthma medication that is used or close to expiration.

(d) An adopted unassigned asthma medication policy must be publicly available.

§40.45. Prescription, Administration, and Disposal of Unassigned Asthma Medications.

(a) Once a school district, open-enrollment charter school, or private school voluntarily adopts an unassigned asthma medication policy, a campus that implements an unassigned asthma medication policy must stock unassigned asthma medication, subject to available funding, as defined by §40.44 of this subchapter (relating to Voluntary Unassigned Asthma Medication Policies).

(b) A campus must obtain a prescription from an authorized healthcare provider each year to stock, possess, and maintain at least two doses of unassigned asthma medication on each campus as described in Texas Education Code §38.208 and any equipment necessary to administer the medication.

(1) The campus must renew this prescription or obtain a new prescription annually.

(2) The number of additional doses may be determined by an individual campus review led by an authorized healthcare provider.

(c) An authorized healthcare provider who prescribes unassigned asthma medication under subsection (b) of this section must provide the campus with a standing order for the administration of unassigned asthma medication to a person who:

(1) is reasonably believed to be experiencing a symptom of asthma; and

(2) has provided written notification and permission as required by the unassigned asthma medication policy.

(d) The unassigned asthma medication must be stored in accordance with the manufacturer's guidelines and local policy of the school district, open-enrollment charter school, or private school.

(e) Expired unassigned asthma medication and other used or expired supplies must be disposed of in accordance with the manufacturer's guidelines and local policy of the school district, open-enrollment charter school or private school.

§40.46. Training.

(a) A school district, open-enrollment charter school, or private school that chooses to adopt a written unassigned asthma medication policy, or a campus that is subject to this subchapter, is responsible for training school nurses about:

(1) the adopted unassigned asthma medication policy;

(2) the authorized healthcare provider's standing order;

(3) follow-up with the prescribing authorized healthcare provider and the student's primary healthcare provider; and

(4) the report required after administering an unassigned asthma medication under §40.47 of this subchapter (relating to Report on Administering Unassigned Asthma Medication).

(b) Each campus must maintain training records and must make available upon request a list of school nurses trained and authorized to administer the unassigned asthma medication on the campus.

§40.47. Report on Administering Unassigned Asthma Medication.

(a) Records relating to implementing and administering the school district, open-enrollment charter school, or private school's unassigned asthma medication policy must be retained per the campus record retention schedule.

(b) The campus must submit a report no later than the 10th business day after the date a school nurse administers asthma medication

in accordance with the unassigned asthma medication policy adopted under this subchapter. The report must be included in the student's permanent record and submitted to the school administrator, prescribing authorized healthcare provider, the student's primary healthcare provider, and to the Department of State Health Services (DSHS) Commissioner.

(c) Notifications to the DSHS Commissioner must be submitted on the designated electronic form available on DSHS's School Health Program website found at dshs.texas.gov.

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 29, 2021.

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Barbara L. Klein

General Counsel

Department of State Health Services

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Proposal publication date: October 16, 2020

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



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 142. DISPUTE RESOLUTION-- BENEFIT CONTESTED CASE HEARING

28 TAC §142.13, §142.19

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC or division) adopts amendments to 28 TAC §142.13, concerning Discovery, and §142.19, concerning Form Interrogatories, to update the interrogatories to increase the time to respond to the interrogatories and to describe the questions that a party may ask using the interrogatories. The amendments are adopted without changes to the proposed text published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 9165) and will not be republished.

REASONED JUSTIFICATION. Texas Labor Code §410.159 requires that the commissioner of workers' compensation prescribe standard form interrogatories for parties to use in a contested case proceeding before DWC. Under §142.13(b) - (d), interrogatories may be presented after the required exchange of documentary evidence, which is to take place no later than 15 days after a benefit review conference, and no later than 20 days before a contested case hearing, unless otherwise agreed. In these amendments, DWC increases the time to respond to an interrogatory from five days to 10. To accommodate the additional five days to respond within the allotted time for a contested case, interrogatories would now be required to be presented no later than 25 days before a hearing, unless the parties agree otherwise.

DWC amends §142.13(d) to set out the rule text in paragraphs and to make other editorial changes to conform the section to

DWC's current style and to improve the rule's clarity. Paragraph (1) is amended to clarify that the interrogatories may be used by all parties, including subclaimants. Section 140.1(3) defines a "party to a proceeding" as "a person entitled to take part in a proceeding because of a direct legal interest in the outcome." Section 140.6(b) states that "a subclaimant as described in [Labor Code] §409.009 [relating to Subclaims] is a party to a claim concerning workers' compensation benefits." Paragraph (2) is amended to require that interrogatories must be presented no later than 25 days before a hearing, rather than 20 days. Paragraph (3) is amended to increase the time to respond to interrogatories from five days to 10. The amendments will go into effect 20 days from filing with the *Texas Register*, and the allowance for 10 days for a response will apply to interrogatories sent after the amendments have gone into effect.

DWC amends §142.19 to describe in new subsection (a) the information that may be sought through interrogatories. That information includes the name and contact information of the person answering the interrogatories; the issues in dispute; any certification of maximum medical improvement and impairment rating; any statement obtained from any person on the issues in dispute; the name and contact information for each health care provider the claimant has seen since the date of injury; the conditions the health care provider treated; and any recordings, photographs, videotapes, or similar material showing the claimant since the date of injury. In addition, for each health care provider the claimant has seen during the five years before the date of injury for treatment of a body part the claimant believes to be part of the claim, a party may request the health care provider's name and contact information, the dates the health care provider treated the claimant, and the conditions the health care provider treated. For each expert witness expected to testify, a party may be asked to provide the expert witness' name and contact information, the subject matter the expert witness may or will testify on, the general substance of the expert witness' opinions, and a brief summary of the basis for those opinions. Also, the interrogatories provide space for five additional questions that a party may use to get specific information relevant to an individual dispute.

Section 142.19 is also amended to add new subsection (b) to note that DWC will develop and make available standard form interrogatories in a form and manner consistent with this rule as required under Labor Code §410.159. The form interrogatories may be found at www.tdi.texas.gov/wc/documents/clainter-car.pdf.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received one written comment in support of the proposal from the Office of Injured Employee Counsel.

Comment: The commenter requested that the form interrogatories include a definition for "certification of maximum medical improvement and impairment rating."

Agency Response: DWC appreciates the comment but disagrees on the need for these definitions. Definitions for both terms are provided under Labor Code §401.011. However, in response to this comment, DWC has added a reference to

DWC Form-069, *Report of Medical Evaluation*, which is used to report a certification of maximum medical improvement and impairment rating.

Comment: The commenter also requested that the form interrogatory for claimants to send to insurance carriers include a question for the insurance carrier to state each ICD-10 Code or diagnosis accepted for a compensable injury.

Agency Response: DWC appreciates the comment but disagrees on the need for this question. This question would be overly specific and burdensome. If a claimant wishes to ask a question specific to their claim, they may use one of the blank spaces provided for additional questions. No change was made in response to this comment.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amended sections under Labor Code §§402.00128, 402.021, 402.061, 410.157, 410.158, and 410.159.

Section 402.00128 describes the general powers and duties of the commissioner, including to hold hearings; take testimony directly or by deposition or interrogatory; and prescribe the form, manner, and procedure for the transmission of information to the division.

Section 402.021(b)(8) describes the Legislature's intent that DWC "effectively educate and clearly inform each person who participates in the system ... of the person's rights and responsibilities under the system and how to appropriately interact within the system."

Section 402.061 provides that the commissioner shall adopt rules as necessary to implement Labor Code, Title 5, Subtitle A.

Section 410.157 provides that the commissioner shall adopt rules governing procedures under which contested case hearings are conducted.

Section 410.158 provides for the scope of discovery in contested case hearings.

Section 410.159 requires the commissioner, by rule, to prescribe standard form sets of interrogatories to obtain information from claimants and insurance carriers.

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 29, 2021.

TRD-202100417

Kara Mace

Deputy Commissioner of Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Effective date: February 18, 2021

Proposal publication date: December 18, 2021

For further information, please call: (512) 804-4703





REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) will review and consider whether to readopt, readopt with amendments, or repeal the rules in Title 1, Part 12, Texas Administrative Code, Chapter 252, *Administration*. This review is conducted in accordance with Government Code §2001.039. Chapter 252 consists of the following rules:

- §252.1: Definition of State Agency for Billing Purpose of the 9-1-1 Service Fees and Surcharges
- §252.2: Purchase of Goods and Services
- §252.3: Sick Leave Pool
- §252.4: Charges for Open Records Requests
- §252.5: Employee Training
- §252.6: Wireless Service Fee Proportional Distribution
- §252.7: Definitions
- §252.8: Emergency Communications Advisory Committee
- §252.9: Liability Protection of NG9-1-1 Service Providers

CSEC has conducted a preliminary review of Chapter 252 and determined that the reasons for initially adopting the chapter continue to exist. Staff does not anticipate proposing substantive amendments to Chapter 252, but may propose reconciling updates. *E.g.*, §252.7, *Definitions*, may be updated to add/delete/reconcile defined terms.

Comments or questions regarding this review should be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942; by facsimile to (512) 305-6937; or by email to csecinfo@csec.texas.gov. (Please include "CSEC Chapter 252 Rule Review" in the subject line.)

Any proposed changes (repeal, readoption, or readoption with amendments) to the Chapter 252 rules will be published for comment in the "Proposed Rules" section of a subsequent issue of the *Texas Register*. In accordance with the requirements of the Administrative Procedures Act, Texas Government Code Chapter 2001. Any proposed changes will be open for public comment prior to being considered for adoption by CSEC.

TRD-202100395

Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: January 27, 2021

Adopted Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review to consider for readoption, revision, or repeal the rule chapter listed below, in its entirety. This review was conducted in accordance with Texas Government Code §2001.039.

Business and Consumer Safety Programs

Chapter 91, Dog and Cat Breeders Program.

Public Comments

The Notice of Intent to Review the rules at 16 TAC Chapter 91 was published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8353). The public comment period closed on December 21, 2020. The Department received one public comment in response to the Notice of Intent to Review for this rule chapter.

The comment requested amendments to the rules. Specifically, the comment proposed that the rules be amended to: prohibit dogs and cats from being kept outdoors when the temperature reaches more than 90 degrees Fahrenheit; require a solid floor area or resting board in the animal's primary enclosure; double the required floor size of primary enclosures; prohibit stacking of primary enclosures for dogs; and prohibit allowing non-veterinarians to perform surgical procedures such as debarking, tail docking, ear cropping, and claw removal on dogs and cats. The Department notes that many, if not all, of these proposed amendments would likely impose a cost on regulated persons, and the Department would be prohibited from enacting the amendments under Texas Government Code, Section 2001.0045. Any proposed amendments that would not impose a cost will be taken under consideration for a future rulemaking because amendments must be made using the standard rulemaking process.

Department Review

The Department may propose amendments in the future to update, clarify, or supplement the existing rules. Any proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment before final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

Commission Action

At its meeting on January 19, 2021, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted Chapter 91, Dog and Cat Breeders Program, in its entirety. This concludes the review of this rule chapter in accordance with Texas Government Code §2001.039.

Filed with the Office of the Secretary of State on February 1, 2021.

TRD-202100438

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Filed: February 1, 2021



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code
Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *State of Texas v. Danny Ginez DBA Jesse's Radiator & Muffler Shop and Rigoberto Ginez*; Cause No. D-1-GN-18-003163; in the 353rd Judicial District, Travis County, Texas.

Nature of the Suit: Defendant Danny Ginez d/b/a Jesse's Radiator & Muffler Shop owns and operates an automotive repair and service shop located at 440 West U.S. Highway 83 in San Juan, Hidalgo County, Texas (the "Facility"). Defendant Rigoberto Ginez owns the adjacent property where part of the Facility is located and is identified as the sales taxpayer for the Facility. The State filed a lawsuit alleging that both Defendants violated the Texas Used Oil Collection, Management, and Recycling Act as well as rules promulgated by the Texas Commission on Environmental Quality ("TCEQ"). Specifically, Defendant Danny Ginez failed to comply with an agreed administrative order issued by TCEQ requiring him to remove all contaminated soil from the Facility and dispose of it at an authorized facility in addition to appropriately labeling all used oil containers. Defendant Rigoberto Ginez was not subject to the same agreed order, but the State alleges that he also violated TCEQ rules by storing contaminated soil on his portion of the property where the Facility is located. After suit was filed, Defendants have come into compliance and remediated their respective properties.

Proposed Agreed Judgment: The proposed Agreed Final Judgment assesses against Defendants, jointly and severally, civil penalties in the amount of \$5,000 and attorney's fees in the amount of \$5,000.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Tyler J. Ryska, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911, or email: tyler.ryska@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

Entered this 1st day of February, 2021.

TRD-202100428

Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: February 1, 2021

Office of Consumer Credit Commissioner

Notice of Rate Bracket Adjustment

The Consumer Credit Commissioner of Texas has ascertained the following brackets and ceilings by use of the formula and method described in Texas Financial Code §341.203.⁽¹⁾

The amounts of brackets in Texas Financial Code §342.201(a) are changed to \$2,220.00 and \$18,500.00, respectively.

The amounts of brackets in Texas Financial Code §342.201(e) are changed to \$3,700.00, \$7,770.00, and \$18,500.00, respectively.

The ceiling amount in Texas Financial Code §342.251 and §342.259 are changed to \$740.00 and \$1,480.00, respectively.

The amounts of the brackets in Texas Financial Code §345.055 are changed to \$3,700.00 and \$7,400.00, respectively.

The amounts of the bracket in Texas Financial Code §345.103 is changed to \$3,700.00.

The ceiling amount of Texas Financial Code §371.158 is changed to \$18,500.00.

The amounts of the brackets in Texas Financial Code §371.159 are changed to \$222.00, \$1,480.00, and \$2,220.00, respectively.

The above dollar amounts of the brackets and ceilings shall govern all applicable credit transactions and loans made on or after July 1, 2021, and extending through June 30, 2022.

⁽¹⁾Computation method: The Reference Base Index (the Index for December 1967) = 101.6. The December 2020 Index = 756.828. The percentage of change is 744.91%. This equates to an increase of 740% after disregarding the percentage of change in excess of multiples of 10%.

TRD-202100453
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 2, 2021

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/08/21 - 02/14/21 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/08/21 - 02/14/21 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and 303.009³ for the period of 02/01/21 - 02/28/21 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 02/01/21 - 02/28/21 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.

³ For variable rate commercial transactions only.

TRD-202100452

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 2, 2021



Texas Education Agency

Request for Applications Concerning the 2021-2022 Career and Technical Education (CTE) Perkins Reserve Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-21-112 is authorized by the Carl D. Perkins Career and Technical Education Act of 2006, Public Law 109-270, Title I, Part C, §112 (a)(1).

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-21-112 from eligible applicants. Eligible applicants are cross-sector regional teams that must include at least one intermediary, three local educational agencies (LEAs), one public institution of higher education (IHE), one workforce development board, and at least two employers in the region representing industries aligned to labor market demand. Regions are defined by the Texas Workforce Commission Workforce Development Areas (see <https://twc.texas.gov/partners/workforce-development-boards-websites>). LEAs, IHEs, and education service centers may serve as fiscal agents for the grant.

Description. The Carl D. Perkins Career and Technical Education Act is intended to expand opportunities for every student to complete education and career pathways that lead to credentials with value in the labor market. The development and implementation of high-quality career pathways requires the engagement of stakeholders from multiple sectors, including Kindergarten-Grade 12 education, postsecondary education, workforce development, and business and industry. This grant program supports collaboration by cross-sector teams that seek to develop and implement high-quality education and career pathways at the regional level. A regional team should be led by an intermediary organization that is prepared to coordinate across sectors and convene all members of the regional team to collaboratively plan and implement education and career pathways. The specific purpose of this grant program is to support regional teams of cross-sector stakeholders to plan for, implement, and scale education and career pathways. Working at the regional level, grantees will (1) be cross-sector stakeholder teams led by a regional intermediary (or intermediaries); (2) focus on education and career pathways systems designed for scale and sustainability; (3) foster innovation through the identification and promotion of promising and proven CTE programs, practices, and strategies that prepare individuals for non-traditional fields; and (4) promote the development, implementation, and adoption of programs of study aligned with state-identified high-skill, high-wage, in-demand occupations or industries.

Dates of Project. The 2021-2022 CTE Perkins Reserve Grant will be implemented during the 2021-2022 school year. Applicants should plan for a starting date of no earlier than July 1, 2021, and an ending date of no later than August 31, 2022.

Project Amount. Approximately \$8,420,548 is available for funding the 2021-2022 CTE Perkins Reserve Grant. It is anticipated that approximately 7-12 grants will be awarded from approximately \$100,000 to \$200,000 (Focus Area 1) and approximately 8-9 grants from approximately \$822,000 to \$925,000 (Focus Area 2). This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications of those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at <http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/Grant-ProgramSearch.aspx> for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. To make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to Amanda.Longtain@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than Thursday, February 18, 2021. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Monday, February 22, 2021. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be submitted to competitivegrants@tea.texas.gov. Applications must be received no later than 11:59 p.m. (Central Time), Tuesday, April 13, 2021, to be considered eligible for funding.

Issued in Austin, Texas, on February 3, 2021.

TRD-202100457

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: February 3, 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 **March 16, 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 **March 16, 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: Ascend Performance Materials Texas Incorporated; DOCKET NUMBER: 2020-0963-AIR-E; IDENTIFIER: RN110008216; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: ammonia pipeline; RULE VIOLATED: Texas Health and Safety Code, §382.085(a) and (b), by failing to not suffer the emission of any air contaminant that causes or contributes to air pollution; PENALTY: \$300,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$150,000; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: BASF Corporation; DOCKET NUMBER: 2020-0057-AIR-E; IDENTIFIER: RN100218049; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review (NSR) Permit Numbers 9513A and PSDTX641M1, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1927, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 15, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §116.115(b)(2)(F) and §122.143(4), NSR Permit Number 19886, General Conditions Number 8, FOP Number O1536, GTC and STC Number 7, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$84,938; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$33,975; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: City of Three Rivers; DOCKET NUMBER: 2020-1142-AIR-E; IDENTIFIER: RN102941192; LOCATION: Three Rivers, Live Oak County; TYPE OF FACILITY: air curtain incinerator; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O4092/General Operating Permit

Number 518, Terms and Conditions Number (b)(3)(D), and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$938; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8912; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: Collin Park Marina, Incorporated; DOCKET NUMBER: 2020-1036-MWD-E; IDENTIFIER: RN102754157; LOCATION: Wylie, Collin 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 WQ0012051001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 3, by failing to comply with permitted effluent limitations; PENALTY: \$6,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,600; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Enterprise Products Operating L.P.; DOCKET NUMBER: 2020-1064-AIR-E; IDENTIFIER: RN104198643; LOCATION: Hungerford, Wharton County; TYPE OF FACILITY: natural gas pipeline; RULE VIOLATED: Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent unauthorized emissions; PENALTY: \$7,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,750; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: EZ ACTION RETAIL, L.P. dba Busy Beaver; DOCKET NUMBER: 2020-1146-PST-E; IDENTIFIER: RN101837862; LOCATION: Falls City, Karnes County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure the underground storage tank (UST) corrosion protection system is operated and maintained in a manner that will provide continuous corrosion protection; and 30 TAC §334.50(b)(1)(B) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks installed on or after January 1, 2009, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$11,749; ENFORCEMENT COORDINATOR: Courtney Atkins, (512) 534-6862; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: K3 Business Solutions LLC; DOCKET NUMBER: 2019-1785-PST-E; IDENTIFIER: RN101548014; LOCATION: Frisco, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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; and 30 TAC §334.50(b)(1)(A) and (2)(A)(ii) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST; PENALTY: \$6,262; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: KIMBERLY-CLARK CORPORATION; DOCKET NUMBER: 2020-0425-IWD-E; IDENTIFIER: RN102177912; LOCATION: Paris, Lamar County; TYPE OF FACILITY: sanitary paper products processing facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge

Elimination System (TPDES) Permit Number WQ0002648000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (5) and §319.5(b) and TPDES Permit Number WQ0002648000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to collect and analyze effluent samples at the intervals specified in the permit; PENALTY: \$9,207; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: Pelican Island Storage Terminal, LLC; DOCKET NUMBER: 2020-1082-AIR-E; IDENTIFIER: RN100224120; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: bulk liquid petroleum storage tank terminal; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit Number O851, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; PENALTY: \$4,313; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Perma Pom LLC; DOCKET NUMBER: 2019-0629-WQ-E; IDENTIFIER: RN102833282; LOCATION: Lane City, Wharton County; TYPE OF FACILITY: miscellaneous manufacturing company; RULES VIOLATED: 30 TAC §307.4(b)(5) and TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of industrial wastewater into or adjacent to any water in the state; PENALTY: \$19,687; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Randy G. O'Dell dba Horseshoe Bend RV Park and Recreational Area; DOCKET NUMBER: 2020-0740-PWS-E; IDENTIFIER: RN109051417; LOCATION: Whitesboro, Cooke County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(c) and (e), by failing to collect and report the results of nitrate sampling to the executive director (ED) for the January 1, 2018 - December 31, 2018, and the January 1, 2019 - December 31, 2019, monitoring periods; and 30 TAC §290.118(c) and (e), by failing to collect and report the results of secondary constituents sampling to the ED for the January 1, 2017 - December 31, 2019, monitoring period; PENALTY: \$1,328; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 676-7487; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Rastex LLC; DOCKET NUMBER: 2020-1003-MSW-E; IDENTIFIER: RN111044830; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: asphalt shingles recycling facility; RULES VIOLATED: 30 TAC §330.7(a) and §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized storage and disposal of municipal solid waste; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: S & M INC dba Quick Stop Food Store; DOCKET NUMBER: 2020-1135-PST-E; IDENTIFIER: RN101787943; LOCATION: Savoy, Fannin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every 30 days; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: TEXAS ELECTRIC COOPERATIVES, INCORPORATED; DOCKET NUMBER: 2020-1155-IWD-E; IDENTIFIER: RN101898948; LOCATION: Jasper, Jasper 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 WQ0001766000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Number 001, by failing to comply with permitted effluent limitations; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: Union Water Supply Corporation; DOCKET NUMBER: 2020-0419-MWD-E; IDENTIFIER: RN102915501; LOCATION: Garciasville, Starr County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.65 and TWC, §26.121(a)(1), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: \$9,600; ENFORCEMENT COORDINATOR: Alyssa Loveday, (512) 239-5504; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-202100442

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: February 2, 2021



Enforcement Orders

An agreed order was adopted regarding City of Austin, Docket No. 2019-0418-MLM-E on January 26, 2021 assessing \$7,188 in administrative penalties with \$1,437 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Grand Parkway Industrial, LP, Docket No. 2019-0556-MWD-E on January 26, 2021 assessing \$6,000 in administrative penalties with \$1,200 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, 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 Xochitl Garcia Chio, Docket No. 2019-1163-PST-E on January 26, 2021 assessing \$6,562 in administrative penalties with \$1,312 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kairos Homes, LLC, Docket No. 2019-1406-WQ-E on January 26, 2021 assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LEGEND OF TROY CORPORATION dba Big Reds, Docket No. 2019-1687-PST-E on January 26, 2021 assessing \$6,710 in administrative penalties with \$1,342 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shelbyville Water Supply Corporation, Docket No. 2020-0324-MLM-E on January 26, 2021 assessing \$7,155 in administrative penalties with \$1,430 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Strip Property Land and Water, LLC, Docket No. 2020-0344-PWS-E on January 26, 2021 assessing \$2,301 in administrative penalties with \$460 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bastrop Independent School District, Docket No. 2020-0357-PST-E on January 26, 2021 assessing \$5,690 in administrative penalties with \$1,138 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 TABISH ENTERPRISES, INC. dba Quick Stop 789, Docket No. 2020-0485-PST-E on January 26, 2021 assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Stanley Purvis Jr., Docket No. 2020-0528-WOC-E on January 26, 2021 assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PANJWANI ENERGY, LLC dba Star Stop 36 and Star Stop 81, Docket No. 2020-0586-PST-E on January 26, 2021 assessing \$6,830 in administrative penalties with \$1,366 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shannon Lynn Goins, Docket No. 2020-0624-PWS-E on January 26, 2021 assessing \$4,700 in administrative penalties with \$940 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Billy Rodgers, Docket No. 2020-0650-PST-E on January 26, 2021 assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PRINCESS, INC., Docket No. 2020-0722-PWS-E on January 26, 2021 assessing \$1,367 in administrative penalties with \$272 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Verde Hills Water Supply Corporation, Docket No. 2020-0776-PWS-E on January 26, 2021 assessing \$250 in administrative penalties with \$50 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DCP Operating Company, LP, Docket No. 2020-0784-AIR-E on January 26, 2021 assessing \$1,250 in administrative penalties with \$250 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sigma Agriscience, LLC, Docket No. 2020-0830-AIR-E on January 26, 2021 assessing \$4,063 in administrative penalties with \$812 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Jeremy L. Miller, Docket No. 2020-1118-OSS-E on January 26, 2021 assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Ken Dietz Homes Inc., Docket No. 2020-1283-WQ-E on January 26, 2021 assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding David Paul Maltais, Docket No. 2020-1323-WOC-E on January 26, 2021 assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202100458

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 3, 2021



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 163747

APPLICATION. Lone Star Concrete, LLC, 11675 Jollyville Road, Suite 150, Austin, Texas 78759-3939 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 163747 to authorize the operation of two permanent concrete batch plants. The facility is proposed to be located at 10975 West Farm-to-Market 487, Florence, Williamson County, Texas 76527. 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=30.847185&lng=-97.758857&zoom=13&type=r>. This

application was submitted to the TCEQ on January 11, 2021. 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 January 20, 2021.

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:

Tuesday, March 30, 2021, at 6:00 p.m.

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 772-235-347. It is recommended that you join the webinar and register for the public hearing at least 15 minutes before the hearing 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 hearing for assistance in accessing the hearing and participating telephonically. Members of the public who wish to only listen to the hearing may call, toll free, (415) 655-0052 and enter access code 924-059-798.

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 Austin Regional Office, located at 12100 Park 35 Circle, Building A,

Room 179, Austin, Texas 78753-1808, 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 Lone Star Concrete, LLC, 11675 Jollyville Road, Suite 150, Austin, Texas 78759-3939, or by calling by Mrs. Melissa Fitts, Vice President, Westward Environmental, Inc. at (830) 249-8284.

Notice Issuance Date: January 28, 2021

TRD-202100427

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 1, 2021



Notice of Application and Public Hearing for an Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls: Proposed Air Quality Registration Number 163653

APPLICATION. Lone Star Concrete, LLC, 11675 Jollyville Road, Suite 150, Austin, Texas 78759-4108 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls Registration Number 163653 to authorize the operation of two permanent concrete batch plants. The facility is proposed to be located at 11824 Harold Green Drive, Austin, Travis County, Texas 78725. 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=30.231562&lng=-97.623746&zoo=13&type=r>. This application was submitted to the TCEQ on December 30, 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 January 8, 2021.

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 com-

ments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Wednesday, March 10, 2021, at 6:00 p.m.

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 651-329-531. It is recommended that you join the webinar and register for the public hearing at least 15 minutes before the hearing 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 hearing for assistance in accessing the hearing and participating telephonically. Members of the public who wish to only listen to the hearing may call, toll free, (631) 992-3221 and enter access code 129-768-321. 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 Austin Regional Office, located at 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753-1808, 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 Lone Star Concrete, LLC, 11675 Jollyville Road, Suite 150, Austin, Texas 78759-4108, or by calling Mrs. Melissa Fitts, Vice President, Westward Environmental, Inc. at (830) 249-8284.

Notice Issuance Date: January 28, 2021

TRD-202100424

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 1, 2021



Notice of Application and Public Hearing for an Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls: Proposed Air Quality Registration Number 163661

APPLICATION. Lone Star Concrete, LLC, 11675 Jollyville Road, Suite 150, Austin, Texas 78759-4108 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls Registration

Number 163661 to authorize the operation of two permanent concrete batch plants. The facility is proposed to be located at 5900 Chandler Road, Hutto, Williamson County, Texas 78634. 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=30.595556&lng=-97.583889&zoom=13&type=r>. This application was submitted to the TCEQ on December 31, 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 January 8, 2021.

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, March 15, 2021, at 6 p.m.

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 575-890-963. It is recommended that you join the webinar and register for the public hearing at least 15 minutes before the hearing 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 hearing for assistance in accessing the hearing and participating telephonically. Members of the public who wish to only listen to the hearing may call, toll free, (415) 930-5321 and enter access code 755-770-556. 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 com-

ments 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 Austin Regional Office, located at 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753-1808, during the hours of 8:00 am 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 Lone Star Concrete, LLC, 11675 Jollyville Road, Suite 150, Austin, Texas 78759-4108, or by calling Mrs. Melissa Fitts, Vice President, Westward Environmental, Inc. at (830) 249-8284.

Notice Issuance Date: January 28, 2021

TRD-202100425

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 1, 2021



Notice of Application and Public Hearing for an Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls: Proposed Air Quality Registration Number 163669

APPLICATION. Lone Star Concrete, LLC, 11675 Jollyville Road, Suite 150, Austin, Texas 78759-3939 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls Registration Number 163669 to authorize the operation of two permanent concrete batch plants. The facility is proposed to be located at 26100 Ronald W. Reagan Boulevard, Georgetown, Williamson County, Texas 78633. 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=30.718277&lng=-97.84269&zoom=13&type=r>. This application was submitted to the TCEQ on January 4, 2021. 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 January 14, 2021.

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, March 22, 2021, at 6:00 p.m.

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 430-863-043. It is recommended that you join the webinar and register for the public hearing at least 15 minutes before the hearing 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 hearing for assistance in accessing the hearing and participating telephonically. Members of the public who wish to only listen to the hearing may call, toll free, (213) 929-4212 and enter access code 356-613-969. 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 Austin Regional Office, located at 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753-1808, 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 Lone Star Concrete, LLC, 11675 Jollyville Road, Suite 150, Austin, Texas 78759-3939, or by calling Mrs. Melissa Fitts, Vice President, Westward Environmental, Inc. at (830) 249-8284.

Notice Issuance Date: January 28, 2021

TRD-202100426

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 1, 2021



Notice of District Petition

Notice issued January 29, 2021

TCEQ Internal Control No. D-05262020-051; Sandfield Limited Partnership, (Petitioner) filed a petition for creation of Denton County Municipal Utility District No. 11 (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 are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 247 acres located within Denton County, Texas; and (4) all of the land within the proposed District is located wholly within the extraterritorial jurisdiction of the City of Denton. By Resolution No. 20-415, passed and adopted on February 8, 2020, the City of Denton, 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) construct, maintain, and operate a waterworks system, including the purchase and sale of water, for domestic and commercial purposes; (2) construct, maintain, and operate a sanitary sewer collection, treatment, and disposal system, for domestic and commercial purposes; (3) construct, install, maintain, purchase, and operate drainage and roadway facilities and improvements; and (4) construct, install, maintain, purchase, and operate facilities, systems, plants, and enterprises of such additional facilities as shall be consonant with the purposes for which the district is organized. 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 \$34,070,094 (\$24,746,272, for water, wastewater, and drainage plus \$9,423,822 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

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 web site at www.tceq.texas.gov.

TRD-202100420

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 29, 2021

◆ ◆ ◆ Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 16, 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 commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 16, 2021**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Pendleton Water Supply Corporation; DOCKET NUMBER: 2019-1479-PWS-E; TCEQ ID NUMBER: RN101238228; LOCATION: 3501 Pendleton Loop, Troy, Bell County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.45(f)(4), by failing to provide a water purchase contract that authorizes maximum daily purchase rate or a uniform purchase rate, plus the actual production capacity of at least 0.6 gallon per minute (gpm) per connection - specifically, the facility had 938 connections and was required to provide 563 gpm of production capacity. However, the water purchase contract authorizes 290 gpm plus the production capacity of 240 gpm, which is a 6% deficiency; and 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: \$100; STAFF ATTORNEY: Ben Warms, Litigation, MC 175, (512) 239-5144; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-202100440
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: February 2, 2021



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 16, 2021**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 16, 2021**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Calvin Corkran; DOCKET NUMBER: 2019-0332-MSW-E; TCEQ ID NUMBER: RN110379880; LOCATION: 6297 Inez Avenue, Orange, Orange County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$1,312; STAFF ATTORNEY: Ben Warmes, Litigation, MC 175, (512) 239-5144; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Paveloc Industries LLC; DOCKET NUMBER: 2018-0387-AIR-E; TCEQ ID NUMBER: RN105936660; LOCATION: 1705 Cottonwood School Road, Rosenberg, Fort Bend County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to operating a source of air contaminants; PENALTY: \$2,500; STAFF ATTORNEY:

Ben Warmes, Litigation, MC 175, (512) 239-5144; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Scott Wilson; DOCKET NUMBER: 2020-0191-MSW-E; TCEQ ID NUMBER: RN110743945; LOCATION: 608 County Road 200, Gonzales, Gonzales County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$1,312; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: Ted Gillis; DOCKET NUMBER: 2018-0401-AIR-E; TCEQ ID NUMBER: RN105936660; LOCATION: 1705 Cottonwood School Road, Rosenberg, Fort Bend County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(a) and (b) and 30 TAC §101.4, by causing, suffering, allowing, or permitting nuisance dust conditions; THSC, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the state of Texas; and THSC, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$13,978; STAFF ATTORNEY: Ben Warmes, Litigation, MC 175, (512) 239-5144; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202100441
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: February 2, 2021



Notice of Request for Public Comment and Notice of a Public Meeting on One Draft Total Maximum Daily Load and One Draft Implementation Plan for Indicator Bacteria in Arenosa Creek

The Texas Commission on Environmental Quality (TCEQ, commission, or agency) has made available for public comment one draft Total Maximum Daily Load (TMDL) and one draft Implementation Plan (I-Plan) for indicator bacteria in Arenosa Creek, of the Bays and Estuaries Basin, within Jackson, Lavaca, and Victoria Counties.

The purpose of the meeting is to provide the public an opportunity to comment on the draft TMDL and the draft I-Plan in one assessment unit: Arenosa Creek 2453C_01.

A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses. The commission requests comments on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, linkage analysis, margin of safety, pollutant load allocation, seasonal variation, public participation, and implementation and reasonable assurances.

The I-Plan, developed by regional stakeholders, is a flexible tool that the governmental and non-governmental participants involved in TMDL implementation will use to guide their actions and practices. The commission requests comment on each of the major components of the I-Plan: management measures, implementation strategy and tracking, review strategy, and communication strategy.

After the public comment period, TCEQ may revise the draft TMDL and the draft I-Plan if appropriate. The final TMDL will then be considered by the commission for adoption and the I-Plan for approval. Upon adoption of the TMDL by the commission, the final TMDL and a response to all comments received will be made available on TCEQ's website. The TMDL will then be submitted to the United States Environmental Protection Agency (EPA) Region 6 office for final action by EPA. Upon approval by EPA, the TMDL will be certified as an update to the State of Texas Water Quality Management Plan. Upon approval by the commission, the I-Plan will be made available on TCEQ's website.

Public Meeting and Testimony. The public meeting for the draft TMDL and draft I-Plan will be held via video conference on **February 25, 2021, at 6:00 p.m.** To join the meeting follow the link <https://tinyurl.com/ArenosaCreekPublicMeeting>. Please place your computer's microphone or telephone on **MUTE** so that background noise is not heard and turn your video **OFF**. Meeting documents are available on the project webpage at <https://www.tceq.texas.gov/waterquality/tmdl/nav/108-arenosa-bacteria>.

Please periodically check <https://www.tceq.texas.gov/waterquality/tmdl/nav/108-arenosa-bacteria> before the meeting date for meeting related updates.

During this meeting, individuals will have the opportunity to present oral statements. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all oral statements have been received.

Written Comments. Please choose one of the methods provided to submit your written comments. Written comments on the draft TMDL and the draft I-Plan may be submitted to Nicole Reed, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted electronically to <https://www6.tceq.texas.gov/rules/ecomments/>. File restrictions may apply to comments submitted via the eComments system. **All written comments must be received at TCEQ by midnight on March 16, 2021**, and should reference One Total Maximum Daily Load and Implementation Plan for Indicator Bacteria in Arenosa Creek.

For further information regarding the draft TMDL and the draft I-Plan, please contact Nicole Reed at Nicole.Reed@tceq.texas.gov. The draft TMDL and the draft I-Plan can be obtained via TCEQ's website at <https://www.tceq.texas.gov/waterquality/tmdl/nav/108-arenosa-bacteria>.

Persons with disabilities who have special communication or other accommodation needs who are planning to participate in the meeting should contact Nicole Reed at Nicole.Reed@tceq.texas.gov. Requests should be made as far in advance as possible.

TRD-202100422

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 29, 2021



Notice of Request for Public Comment and Notice of a Public Meeting on Two Draft Total Maximum Daily Loads for Indicator Bacteria in the Caney Creek Watershed

The Texas Commission on Environmental Quality (TCEQ, commission, or agency) has made available for public comment two draft To-

tal Maximum Daily Loads (TMDLs) for indicator bacteria in the Caney Creek watershed, of the Brazos-Colorado Coastal Basin, within Brazoria, Matagorda, and Wharton Counties.

The purpose of the meeting is to provide the public an opportunity to comment on the draft TMDLs in two assessment units: Caney Creek Tidal 1304_01 and Linnville Bayou 1304A_01.

A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses. The commission requests comments on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, linkage analysis, margin of safety, pollutant load allocation, seasonal variation, public participation, and implementation and reasonable assurances.

After the public comment period, TCEQ may revise the draft TMDLs if appropriate. The final TMDLs will then be considered by the commission for adoption. Upon adoption of the TMDLs by the commission, the final TMDLs and a response to all comments received will be made available on TCEQ's website. The TMDLs will then be submitted to the United States Environmental Protection Agency (EPA) Region 6 office for final action by EPA. Upon approval by EPA, the TMDLs will be certified as an update to the State of Texas Water Quality Management Plan.

Public Meeting and Testimony. The public meeting for the draft TMDLs will be held via video conference on **February 23, 2021, at 6:00 p.m.** To join the meeting follow the link <https://tinyurl.com/CaneyCreekPublicMeeting>. Please place your computer's microphone or telephone on MUTE so that background noise is not heard and turn your video OFF. Meeting documents are available on the project webpage at: <https://www.tceq.texas.gov/waterquality/tmdl/nav/115-caney-creek-bacteria>.

Please periodically check <https://www.tceq.texas.gov/waterquality/tmdl/nav/115-caneycreek-bacteria> before the meeting date for meeting related updates.

During this meeting, individuals will have the opportunity to present oral statements. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all oral statements have been received.

Written Comments. Please choose one of the methods provided to submit your written comments. Written comments on the draft TMDLs may be submitted to Jason Leifester, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted electronically to: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments submitted via the eComments system. **All written comments must be received at TCEQ by midnight on March 16, 2021** and should reference Two Total Maximum Daily Loads for Indicator Bacteria in the Caney Creek Watershed.

For further information regarding the draft TMDLs, please contact Jason Leifester at Jason.Leifester@tceq.texas.gov. The draft TMDLs can be obtained via TCEQ's website at: <https://www.tceq.texas.gov/waterquality/tmdl/nav/115-caneycreek-bacteria>.

Persons with disabilities who have special communication or other accommodation needs who are planning to participate in the meeting should contact Jason Leifester at Jason.Leifester@tceq.texas.gov. Requests should be made as far in advance as possible.

TRD-202100423



Notice of Water Rights Application

Notices issued January 29, 2021

APPLICATION NO. 13601; LFP Unimproved Investments, Ltd. and Swinging R LLC, 420 E. Cotter Ave., Port Aransas, Texas 78373, and Swinging R LLC, 1700 Andrea Drive, Bay City, Texas 77414, (Applicants) have applied for a water use permit to authorize the maintenance of a reservoir on Medio Creek, San Antonio-Nueces Coastal Basin, impounding a total of 0.57 acre-feet of water for recreational, wildlife, and livestock purposes in Bee County. The applicants indicate the reservoir will be maintained with groundwater. More information on the application and how to participate in the permitting process is given below. The application and fees were received on March 28, 2019. Additional information was received on July 26, August 9, September 23, and October 9, 2019 and February 6, and 7, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on February 27, 2020.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to maintaining the reservoir with groundwater from the Gulf Coast Aquifer. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this 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) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. 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. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief

Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering WRPERM 13601 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

APPLICATION NO. 13738; Port Arthur Terminal LLC, 811 Main Street, Suite 2800, Houston, Texas 77002, Applicant, seeks a Water Use Permit to divert and use not to exceed 600 acre-feet of water per year from a diversion point on the Sabine-Neches Channel, Neches-Trinity Coastal Basin, at a maximum diversion rate of 9 cfs (4,000 gpm) for industrial purposes in Jefferson County. More information on the application and how to participate in the permitting process is given below.

The application and fees were received on August 20, 2020. Additional information and fees were received on October 19 and October 28, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on October 30, 2020. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, measures to avoid impingement and entrainment of aquatic organisms. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this 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) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. 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. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087

or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering WRPERM 13738 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

TRD-202100419

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 29, 2021



Texas Higher Education Coordinating Board

Notice of Intent to Engage in Negotiated Rulemaking--Course Sequencing

(Texas Public Institutions of Higher Education)

Senate Bill 25, Section 5, 86th Texas Legislature, amends in part Texas Education Code Chapter 51 by adding Section 51.96852, Recommended Course Sequences. The legislation requires the Texas Higher Education Coordinating Board (THECB) to adopt rules for the administration of this section and to employ the negotiated rulemaking process described in Texas Government Code chapter 2008 (Negotiated Rulemaking Act) in developing the rules.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via GovDelivery to all chancellors and presidents at Texas public institutions of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate up to two representatives from their system/institution.

From this effort, 33 individuals responded (out of approximately 149 affected entities) and expressed an interest to participate or nominated representatives from their system/institution to participate on the negotiated rulemaking committee for course sequencing. The positions held by the volunteers and nominees indicate a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for course sequencing:

1. Public Community Colleges;
2. Public Health-Related Institutions;
3. Public Universities;
4. Public Technical Colleges;
5. Public State Colleges; and
6. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 22 individuals to the negotiated rulemaking committee for course sequencing to represent affected parties and the agency:

Public Community Colleges

Susan Thomason, Associate Vice President of Instructional Services, Austin Community College

Diane Lovell, Vice Chancellor of Student Services, Blinn College

Johnelle Welsh, Dean of Student Services, Central Texas College

Jenee' Higgins, Dean of Instruction, Howard College

Becky Johnson, Dean of Arts and Mathematical Sciences, Kilgore College

Melinda Carroll, Vice Chancellor of Enrollment Management, North Central Texas College

Christine Hubbard, President, North Texas Community College Consortium

Billy Adams, Vice President of Instruction, Panola College

Martha Robertson, Assistant Vice Chancellor for Teaching and Learning, San Jacinto College

Ryan Gibbs, Vice President of Academic Affairs, South Plains College

Public Health-Related Institutions

Charles P. Mouton, Executive Vice President/Provost and Dean of Medicine, The University of Texas Medical Branch at Galveston (The University of Texas System)

Public Universities

Darla English, Registrar, Midwestern State University

Diane Brice, Registrar, Texas A&M University (Texas A&M University System)

Amy Aldridge Sanford, Associate Provost, Texas A&M University-Corpus Christi (Texas A&M University System)

Kambra Bolch, Associate Dean of University College, Texas State University (Texas State University System)

Patrick Hughes, Vice Provost, Texas Tech University (Texas Tech University System)

Teri Longacre, Vice Provost and Dean of Undergraduate Student Success, University of Houston (University of Houston System)

Daniel Villanueva, Jr., Associate Vice President of Enrollment Management and Acting Registrar, University of Houston-Downtown (University of Houston System)

Shari Schwartz, Associate Vice President of Enrollment and Registrar, University of North Texas (University of North Texas System)

Laura Saenz, Associate Vice President of Curriculum and Institutional Assessment, The University of Texas Rio Grande Valley (The University of Texas System)

Public State Colleges

Suzonne Crockett, Dean of Academic Studies, Lamar State College Orange (Texas State University System)

Texas Higher Education Coordinating Board

Stacey Silverman, Assistant Commissioner for Academic and Health Affairs

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

*Name and contact information of the person submitting the application;

*Description of how the person is significantly affected by the rule and how their interests are different than those represented by the persons named above;

*Name and contact information of the person being nominated for membership; and

*Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rule-making committee for course sequencing. Comments and applications for membership on the committee must be submitted by February 21, 2021, to Laurie A. Frederick, Convener, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX, 78711, or via email at Laurie.Frederick@highered.texas.gov.

TRD-202100456

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Filed: February 3, 2021

◆ ◆ ◆
Texas Department of Housing and Community Affairs

Notice of Funding Availability (NOFA): CDBG-CV Texas Emergency Mortgage Assistance Program

The Texas Department of Housing and Community Affairs (TDHCA) is pleased to announce a Notice of Funding Availability (NOFA) of \$69.6 million in Community Development Block Grant CARES Act (CDBG-CV) funds for cities, counties, local and regional nonprofits, and regional organizations to provide mortgage assistance through the Texas Emergency Mortgage Assistance Program (TEMAP). These entities can apply through a competitive process to access funds that provide mortgage assistance. The funds will provide income eligible homeowners, who have been economically impacted by COVID-19, with up to six consecutive months of an eligible household's mortgage payments.

Documents including the NOFA, the application, and the program guidelines are available at: www.tdhca.state.tx.us/CDBG-CARES.htm. The TEMAP application period is open from January 29, 2021, through 5:00 p.m., Austin local time, on April 12, 2021.

TRD-202100454

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: February 2, 2021

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

Application for Synergy Insurance Company, a foreign fire and/or casualty company, to change its name to Prescient National Insurance Company. The home office is in Charlotte, North Carolina.

Application for incorporation in the state of Texas for Bestow Life Insurance Company, a domestic life, accident and/or health company. The home office is in Dallas, 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-202100459

James Person

General Counsel

Texas Department of Insurance

Filed: February 3, 2021

◆ ◆ ◆
Texas Lottery Commission

Scratch Ticket Game Number 2296 "LADY LUCK"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2296 is "LADY LUCK". The play style is "find symbol".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2296 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2296.

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: BELL SYMBOL, CHERRY SYMBOL, CLUB SYMBOL, DIAMOND SYMBOL, HEART SYMBOL, KEY SYMBOL, POT OF GOLD SYMBOL, HORSESHOE SYMBOL, SEVEN SYMBOL, STAR SYMBOL, MONEY BAG SYMBOL, \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$40.00, \$50.00, \$100, \$500 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2296 - 1.2D

PLAY SYMBOL	CAPTION
BELL SYMBOL	BELL
CHERRY SYMBOL	CHERRY
CLUB SYMBOL	CLUB
DIAMOND SYMBOL	DIAMOND
HEART SYMBOL	HEART
KEY SYMBOL	KEY
POT OF GOLD SYMBOL	POTGLD
HORSESHOE SYMBOL	SHOE
SEVEN SYMBOL	SEVEN
STAR SYMBOL	STAR
MONEY BAG SYMBOL	WIN\$
\$1.00	ONE\$
\$2.00	TWO\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$40.00	FRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN
\$1,000	ONTH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven

(7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2296), 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: 2296-0000001-001.

H. Pack - A Pack of the "LADY LUCK" 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 "LADY LUCK" Scratch Ticket Game No. 2296.

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 "LADY LUCK" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twelve (12) Play Symbols. If a player reveals a "MONEY BAG" Play Symbol, the player wins 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 twelve (12) 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 twelve (12) 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 twelve (12) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twelve (12) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to six (6) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. The "MONEY BAG" (WIN\$) Play Symbol may appear multiple times on intended winning Tickets, unless restricted by other parameters, play action or prize structure.

E. Non-winning Prize Symbols will never appear more than one (1) time.

F. The "MONEY BAG" (WIN\$) Play Symbol will only appear on winning Tickets as dictated by the prize structure.

G. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "LADY LUCK" Scratch Ticket Game prize of \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$40.00, \$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 \$40.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LADY LUCK" Scratch Ticket Game prize of \$1,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LADY LUCK" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "LADY LUCK" 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 "LADY LUCK" 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 10,080,000 Scratch Tickets in Scratch Ticket Game No. 2296. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2296 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1.00	940,800	10.71
\$2.00	873,600	11.54
\$5.00	134,400	75.00
\$10.00	67,200	150.00
\$20.00	33,600	300.00
\$40.00	25,200	400.00
\$100	2,100	4,800.00
\$500	140	72,000.00
\$1,000	56	180,000.00

*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 4.85. 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. 2296 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. 2296, 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-202100446
 Bob Biard
 General Counsel
 Texas Commission on Environmental Quality
 Filed: February 2, 2021



Scratch Ticket Game Number 2299 "LUCKY DOG"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2299 is "LUCKY DOG". The play style is "key symbol match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2299 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2299.

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: BRUNO SYMBOL, BAXTER SYMBOL, JACK SYMBOL, DUKE SYMBOL, DINO SYMBOL, ELLA SYMBOL, SADIE SYMBOL, BRADY SYMBOL, MAX SYMBOL, ROVER SYMBOL, WRIGLEY SYMBOL, KODA SYMBOL, GINGER SYMBOL, SPOT SYMBOL, DAISY SYMBOL, AUGGIE SYMBOL, COCO SYMBOL, LUNA SYMBOL, GOOSE SYMBOL, BRUCE SYMBOL, LOLA SYMBOL, BAILEY SYMBOL, JUNIOR SYMBOL, SAGE SYMBOL, FIDO SYMBOL, MISTY SYMBOL, DOGHOUSE SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2299 - 1.2D

PLAY SYMBOL	CAPTION
BRUNO SYMBOL	BRUNO
BAXTER SYMBOL	BAXTER
JACK SYMBOL	JACK
DUKE SYMBOL	DUKE
DINO SYMBOL	DINO
ELLA SYMBOL	ELLA
SADIE SYMBOL	SADIE
BRADY SYMBOL	BRADY
MAX SYMBOL	MAX
ROVER SYMBOL	ROVER
WRIGLEY SYMBOL	WRIGLEY
KODA SYMBOL	KODA
GINGER SYMBOL	GINGER
SPOT SYMBOL	SPOT
DAISY SYMBOL	DAISY
AUGGIE SYMBOL	AUGGIE
COCO SYMBOL	COCO
LUNA SYMBOL	LUNA
GOOSE SYMBOL	GOOSE
BRUCE SYMBOL	BRUCE
LOLA SYMBOL	LOLA
BAILEY SYMBOL	BAILEY
JUNIOR SYMBOL	JUNIOR
SAGE SYMBOL	SAGE

FIDO SYMBOL	FIDO
MISTY SYMBOL	MISTY
DOGHOUSE SYMBOL	DOUBLE
\$2.00	TWODOL
\$4.00	FORDOL
\$5.00	FIVDOL
\$10.00	TENDOL
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONEHUN
\$30,000	30 THOU

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 (2299), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2299-0000001-001.

H. Pack - A Pack of the "LUCKY DOG" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "LUCKY DOG" Scratch Ticket Game No. 2299.

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 "LUCKY DOG" Scratch Ticket

Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty (20) Play Symbols. If a player matches any of the YOUR DOGS Play Symbols to the WINNING DOG Play Symbol, the player wins the PRIZE for that dog. If the player reveals a "DOGHOUSE" 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 twenty (20) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty (20) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty (20) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty (20) 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 SYMBOL MATCH: No matching non-winning YOUR DOGS Play Symbols on a Ticket.

D. KEY SYMBOL MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

E. KEY SYMBOL MATCH: A Ticket may have up to three (3) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

F. KEY SYMBOL MATCH: The "DOGHOUSE" (DOUBLE) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY DOG" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY DOG" Scratch Ticket Game prize of \$30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY DOG" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "LUCKY DOG" 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 "LUCKY DOG" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,000,000 Scratch Tickets in Scratch Ticket Game No. 2299. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2299 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2.00	936,000	9.62
\$4.00	342,000	26.32
\$5.00	324,000	27.78
\$10.00	360,000	25.00
\$20.00	90,000	100.00
\$50.00	15,000	600.00
\$100	5,250	1,714.29
\$30,000	6	1,500,000.00

*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 4.34. 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. 2299 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. 2299, 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-202100444
 Bob Biard
 General Counsel
 Texas Commission on Environmental Quality
 Filed: February 2, 2021



Scratch Ticket Game Number 2334 "\$50,000 POKER"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2334 is "\$50,000 POKER". The play style is "cards - poker".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2334 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2334.

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: 2 OF CLUBS SYMBOL, 3 OF CLUBS SYMBOL, 4 OF CLUBS SYMBOL, 5 OF CLUBS SYMBOL, 6 OF CLUBS SYMBOL, 7 OF CLUBS SYMBOL, 8 OF CLUBS SYMBOL, 9 OF CLUBS SYMBOL, 10 OF CLUBS SYMBOL, J OF CLUBS SYMBOL, Q OF CLUBS SYMBOL, K OF CLUBS SYMBOL, A OF CLUBS SYMBOL, 2 OF SPADES SYMBOL, 3 OF SPADES SYMBOL, 4 OF SPADES SYMBOL, 5 OF SPADES SYMBOL, 6 OF SPADES SYMBOL, 7 OF SPADES SYMBOL, 8 OF SPADES SYMBOL, 9 OF SPADES SYMBOL, 10 OF SPADES SYMBOL, J OF SPADES SYMBOL, Q OF SPADES SYMBOL, K OF SPADES SYMBOL, A OF SPADES SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$200, \$500, \$2,500 and \$50,000. The possible red Play Symbols are: 2 OF DIAMONDS SYMBOL, 3 OF DIAMONDS SYMBOL, 4 OF DIAMONDS SYMBOL, 5 OF DIAMONDS SYMBOL, 6 OF DIAMONDS SYMBOL, 7 OF DIAMONDS SYMBOL,

8 OF DIAMONDS SYMBOL, 9 OF DIAMONDS SYMBOL, 10 OF DIAMONDS SYMBOL, J OF DIAMONDS SYMBOL, Q OF DIAMONDS SYMBOL, K OF DIAMONDS SYMBOL, A OF DIAMONDS SYMBOL, 2 OF HEARTS SYMBOL, 3 OF HEARTS SYMBOL, 4 OF HEARTS SYMBOL, 5 OF HEARTS SYMBOL, 6 OF HEARTS SYMBOL, 7 OF HEARTS SYMBOL, 8 OF HEARTS SYMBOL, 9 OF HEARTS SYMBOL, 10 OF HEARTS SYMBOL, J OF HEARTS SYMBOL, Q OF HEARTS SYMBOL, K OF HEARTS SYMBOL and A OF HEARTS SYMBOL.

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. 2334 - 1.2D

PLAY SYMBOL	CAPTION
2 OF CLUBS SYMBOL (BLACK)	2CLB (BLACK)
3 OF CLUBS SYMBOL (BLACK)	3CLB (BLACK)
4 OF CLUBS SYMBOL (BLACK)	4CLB (BLACK)
5 OF CLUBS SYMBOL (BLACK)	5CLB (BLACK)
6 OF CLUBS SYMBOL (BLACK)	6CLB (BLACK)
7 OF CLUBS SYMBOL (BLACK)	7CLB (BLACK)
8 OF CLUBS SYMBOL (BLACK)	8CLB (BLACK)
9 OF CLUBS SYMBOL (BLACK)	9CLB (BLACK)
10 OF CLUBS SYMBOL (BLACK)	TCLB (BLACK)
J OF CLUBS SYMBOL (BLACK)	JCLB (BLACK)
Q OF CLUBS SYMBOL (BLACK)	QCLB (BLACK)
K OF CLUBS SYMBOL (BLACK)	KCLB (BLACK)
A OF CLUBS SYMBOL (BLACK)	ACLB (BLACK)
2 OF SPADES SYMBOL (BLACK)	2SPD (BLACK)
3 OF SPADES SYMBOL (BLACK)	3SPD (BLACK)
4 OF SPADES SYMBOL (BLACK)	4SPD (BLACK)
5 OF SPADES SYMBOL (BLACK)	5SPD (BLACK)
6 OF SPADES SYMBOL (BLACK)	6SPD (BLACK)
7 OF SPADES SYMBOL (BLACK)	7SPD (BLACK)
8 OF SPADES SYMBOL (BLACK)	8SPD (BLACK)
9 OF SPADES SYMBOL (BLACK)	9SPD (BLACK)
10 OF SPADES SYMBOL (BLACK)	TSPD (BLACK)
J OF SPADES SYMBOL (BLACK)	JSPD (BLACK)
Q OF SPADES SYMBOL (BLACK)	QSPD (BLACK)

K OF SPADES SYMBOL (BLACK)	KSPD (BLACK)
A OF SPADES SYMBOL (BLACK)	ASPD (BLACK)
2 OF DIAMONDS SYMBOL (RED)	2DMD (RED)
3 OF DIAMONDS SYMBOL (RED)	3DMD (RED)
4 OF DIAMONDS SYMBOL (RED)	4DMD (RED)
5 OF DIAMONDS SYMBOL (RED)	5DMD (RED)
6 OF DIAMONDS SYMBOL (RED)	6DMD (RED)
7 OF DIAMONDS SYMBOL (RED)	7DMD (RED)
8 OF DIAMONDS SYMBOL (RED)	8DMD (RED)
9 OF DIAMONDS SYMBOL (RED)	9DMD (RED)
10 OF DIAMONDS SYMBOL (RED)	TDMD (RED)
J OF DIAMONDS SYMBOL (RED)	JDMD (RED)
Q OF DIAMONDS SYMBOL (RED)	QDMD (RED)
K OF DIAMONDS SYMBOL (RED)	KDMD (RED)
A OF DIAMONDS SYMBOL (RED)	ADMD (RED)
2 OF HEARTS SYMBOL (RED)	2HRT (RED)
3 OF HEARTS SYMBOL (RED)	3HRT (RED)
4 OF HEARTS SYMBOL (RED)	4HRT (RED)
5 OF HEARTS SYMBOL (RED)	5HRT (RED)
6 OF HEARTS SYMBOL (RED)	6HRT (RED)
7 OF HEARTS SYMBOL (RED)	7HRT (RED)
8 OF HEARTS SYMBOL (RED)	8HRT (RED)
9 OF HEARTS SYMBOL (RED)	9HRT (RED)
10 OF HEARTS SYMBOL (RED)	THRT (RED)
J OF HEARTS SYMBOL (RED)	JHRT (RED)
Q OF HEARTS SYMBOL (RED)	QHRT (RED)
K OF HEARTS SYMBOL (RED)	KHRT (RED)

A OF HEARTS SYMBOL (RED)	AHRT (RED)
\$5.00 (BLACK)	FIV\$ (BLACK)
\$10.00 (BLACK)	TEN\$ (BLACK)
\$15.00 (BLACK)	FFN\$ (BLACK)
\$20.00 (BLACK)	TWY\$ (BLACK)
\$25.00 (BLACK)	TWV\$ (BLACK)
\$50.00 (BLACK)	FFTY\$ (BLACK)
\$75.00 (BLACK)	SVFV\$ (BLACK)
\$100 (BLACK)	ONHN (BLACK)
\$200 (BLACK)	TOHN (BLACK)
\$500 (BLACK)	FVHN (BLACK)
\$2,500 (BLACK)	25HN (BLACK)
\$50,000 (BLACK)	50TH (BLACK)

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 (2334), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2334-000001-001.

H. Pack - A Pack of the "\$50,000 POKER" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$50,000 POKER" Scratch Ticket Game No. 2334.

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 "\$50,000 POKER" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-five (65) Play Symbols. If any of the player's YOUR HANDS beats (has a higher ranking than) the DEALER'S HAND, the player wins the PRIZE for that HAND. (See back of ticket for RANKING OF POKER HANDS. Only YOUR HANDS combinations listed in the RANKING OF POKER HANDS can be used to beat the DEALER'S HAND.) 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 sixty-five (65) 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 sixty-five (65) 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 sixty-five (65) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the sixty-five (65) 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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.
- B. A Ticket can win as indicated by the prize structure.
- C. A Ticket can win up to ten (10) times.
- D. On winning and Non-Winning Tickets, the top cash prizes of \$2,500 and \$50,000 will each appear at least once, excluding Tickets winning ten (10) times.
- E. None of the YOUR HANDS in HAND 1 - HAND 10 will have a combination listed in the RANKING OF POKER HANDS shown on the back of the Ticket that matches the DEALER'S HAND (i.e., if any of the YOUR HANDS in HAND 1 - HAND 10 has a Straight, then the DEALER'S HAND will not have a Straight; if any of the YOUR HANDS in HAND 1 - HAND 10 has a Flush, then the DEALER'S HAND will not have a Flush, etc.). This includes not having One Pair in any of the YOUR HANDS in HAND 1 - HAND 10 and One Pair in the DEALER'S HAND regardless of the rank of the One Pairs (i.e., if any of the YOUR HANDS in HAND 1 - HAND 10 has One Pair of 8 Card Play Symbols, then the DEALER'S HAND will not have One Pair of Jack Card Play Symbols). This applies to all the combinations listed in the RANKING OF POKER HANDS and HANDS that do not have a combination listed in the RANKING OF POKER HANDS.
- F. If none of the YOUR HANDS in HAND 1 - HAND 10 have a combination listed in the RANKING OF POKER HANDS shown on the back of the Ticket, the DEALER'S HAND will have one (1) of the combinations listed in the RANKING OF POKER HANDS, and therefore the Ticket will be non-winning.
- G. If the DEALER'S HAND does not have a combination listed in the RANKING OF POKER HANDS shown on the back of the Ticket, all of the YOUR HANDS in HAND 1 - HAND 10 will have one (1) of the combinations listed in the RANKING OF POKER HANDS, and therefore the Ticket will win ten (10) times and will win as per the prize structure.
- H. On all Tickets, Card Play Symbols 2 - Ace, regardless of suit, will be used.
- I. Ace Card Play Symbols are considered high when creating a Royal Flush, Straight Flush and a Straight.
- J. On winning and Non-Winning Tickets, it is possible for one (1) or more of the YOUR HANDS in HAND 1 - HAND 10 to not have any of the combinations listed in the RANKING OF POKER HANDS shown on the back of the Ticket.
- K. An Ace Card Play Symbol will never appear with a 2 Card Play Symbol, a 3 Card Play Symbol, a 4 Card Play Symbol and a 5 Card Play Symbol in the same HAND.
- L. A wraparound Straight Flush or Straight (i.e., a Queen Card Play Symbol, a King Card Play Symbol, an Ace Card Play Symbol, a 2 Card Play Symbol and a 3 Card Play Symbol) will never appear in any HAND.
- M. Two (2) YOUR HANDS in HAND 1 - HAND 10 will not have matching five (5) Card Play Symbols, in any order.
- N. There will not be matching Card Play Symbols in the same HAND.
- O. There will not be matching Card Play Symbols in adjacent (horizontal, vertical or diagonal) play spots.
- P. A Card Play Symbol will not appear more than two (2) times on a Ticket.

Q. A Card Play Symbol that appears in any of the YOUR HANDS in HAND 1 - HAND 10 will never match a Card Play Symbol that appears in the DEALER'S HAND.

R. The DEALER'S HAND will never have a Royal Flush or a Straight Flush.

S. In HAND 1 - HAND 10, a Royal Flush, a Straight Flush and a Straight will always appear in ascending order from left to right.

T. In the DEALER'S HAND, a Straight will appear in ascending order from left to right and top to bottom. The Card Play Symbol with the lowest rank will appear in the top left play spot and the Card Play Symbol with the highest rank will appear in the bottom right play spot.

U. If any HAND has Four of a Kind, the four (4) Card Play Symbols of the same rank will be in adjacent play spots.

V. If any HAND has a Full House, the three (3) Card Play Symbols of the same rank will be in adjacent play spots and the two (2) Card Play Symbols of the same rank will be in adjacent play spots.

W. If any HAND has a Flush, the five (5) non-consecutive Card Play Symbols of the same suit will be in ascending order from left to right.

X. If any HAND has Three of a Kind, the three (3) Card Play Symbols of the same rank will be in adjacent play spots.

Y. If any HAND has Two Pair, one pair of the two (2) Card Play Symbols of the same rank will be in adjacent play spots and the second pair of the two (2) Card Play Symbols of the same rank will be in adjacent play spots.

Z. If any HAND has One Pair, the two (2) Card Play Symbols of the same rank will be in adjacent play spots.

AA. On winning and Non-Winning Tickets, there will be no more than two (2) matching non-winning Prize Symbols.

BB. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

CC. Prize Symbols will always appear in black.

DD. On all Tickets, there will never be two (2) or more Card Play Symbols of the same rank in vertically adjacent play spots of the HAND 1 - HAND 10 play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$50,000 POKER" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$75.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$50,000 POKER" Scratch Ticket Game prize of \$2,500 or \$50,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is

validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$50,000 POKER" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$50,000 POKER" 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 "\$50,000 POKER" 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 person-

nel 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 10,080,000 Scratch Tickets in Scratch Ticket Game No. 2334. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2334 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	963,200	10.47
\$10.00	604,800	16.67
\$15.00	179,200	56.25
\$20.00	67,200	150.00
\$25.00	109,200	92.31
\$50.00	70,056	143.88
\$75.00	112,000	90.00
\$100	21,140	476.82
\$200	5,740	1,756.10
\$500	1,260	8,000.00
\$2,500	140	72,000.00
\$50,000	10	1,008,000.00

*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 4.72. 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. 2334 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. 2334, 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-202100450
Bob Biard
General Counsel
Texas Lottery Commission
Filed: February 2, 2021



Scratch Ticket Game Number 2339 "MUCHO DINERO"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2339 is "MUCHO DINERO". The play style is "find symbol".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2339 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2339.

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: STAR SYMBOL, SUN SYMBOL, CHERRY SYMBOL, GOLD BAR SYMBOL, HEART SYMBOL, HORSESHOE SYMBOL, MOON SYMBOL, ANCHOR SYMBOL, DIAMOND SYMBOL, BOAT SYMBOL, LEMON SYMBOL, LIGHTNING BOLT SYMBOL, ELEPHANT SYMBOL, DICE SYMBOL, COIN SYMBOL, STACK OF CASH SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$1,000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2339 - 1.2D

PLAY SYMBOL	CAPTION
STAR SYMBOL	STAR
SUN SYMBOL	SUN
CHERRY SYMBOL	CHERRY
GOLD BAR SYMBOL	BAR
HEART SYMBOL	HEART
HORSESHOE SYMBOL	HRSHOE
MOON SYMBOL	MOON
ANCHOR SYMBOL	ANCHOR
DIAMOND SYMBOL	DIAMND
BOAT SYMBOL	BOAT
LEMON SYMBOL	LEMON
LIGHTNING BOLT SYMBOL	BOLT
ELEPHANT SYMBOL	ELEPHT
DICE SYMBOL	DICE
COIN SYMBOL	WIN\$
STACK OF CASH SYMBOL	DBL
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$1,000	ONTH
\$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2339), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2339-0000001-001.

H. Pack - A Pack of the "MUCHO DINERO" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MU-CHO DINERO" Scratch Ticket Game No. 2339.

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 "MUCHO DINERO" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty (20) Play Symbols. If a player reveals a "COIN" Play Symbol, the player wins the prize for that symbol. If the player reveals a "STACK OF CASH" Play Symbol, the player wins DOUBLE the prize for that symbol. Si un jugador revela un Símbolo de Juego de "MONEDA", el jugador gana el premio para ese símbolo. Si un jugador revela un Símbolo de Juego de "FAJO DE BILLETES", el jugador gana DOBLE el premio para ese símbolo. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty (20) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly twenty (20) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the twenty (20) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty (20) 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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to ten (10) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$1,000 and \$30,000 will each appear at least once, except on Tickets winning ten (10) times and with respect to other parameters, play action or prize structure.

E. No matching non-winning Play Symbols will appear on a Ticket.

F. On all Tickets, a Prize Symbol will not appear more than two (2) times, except as required by the prize structure to create multiple wins.

G. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

H. The "COIN" (WIN\$) Play Symbol will win the corresponding prize for that symbol.

I. The "STACK OF CASH" (DBL) Play Symbol will win DOUBLE the prize for that symbol and will win as per the prize structure.

J. The "STACK OF CASH" (DBL) Play Symbol will not appear more than once on a Ticket.

K. The "COIN" (WIN\$) and "STACK OF CASH" (DBL) Play Symbols will never appear on Non-Winning Tickets.

2.3 Procedure for Claiming Prizes.

A. To claim a "MUCHO DINERO" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, \$20.00, \$30.00, \$50.00 or \$100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer

shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00 or \$100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MUCHO DINERO" Scratch Ticket Game prize of \$1,000 or \$30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MUCHO DINERO" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "MUCHO DINERO" 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 "MUCHO DINERO" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,120,000 Scratch Tickets in Scratch Ticket Game No. 2339. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2339 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2.00	924,160	9.87
\$4.00	535,040	17.05
\$5.00	182,400	50.00
\$8.00	206,720	44.12
\$10.00	170,240	53.57
\$20.00	72,960	125.00
\$30.00	14,250	640.00
\$50.00	15,010	607.59
\$100	7,030	1,297.30
\$1,000	20	456,000.00
\$30,000	8	1,140,000.00

*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 4.29. 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. 2339 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. 2339, 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-202100445
 Bob Biard
 General Counsel
 Texas Commission on Environmental Quality
 Filed: February 2, 2021



Panhandle Regional Planning Commission

Correction of Error

The Panhandle Regional Planning Commission published a Legal Notice in the February 5, 2021, issue of the *Texas Register* (46 TexReg 977). Due to an error by the Commission, the incorrect receipt date for proposals was listed in the last sentence of the notice. The correct date for receipt of proposals is March 12, 2021.

TRD-202100421
 Leslie Hardin
 Workforce Development Contracts Coordinator
 Panhandle Regional Planning Commission
 Filed: January 29, 2021



Legal Notice

The Panhandle Regional Planning Commission (PRPC) is requesting proposals for contracts to provide comprehensive general building maintenance services for the Workforce Solutions Panhandle offices located at 3120 Eddy Street in Amarillo, Texas and 1315 W. Wilson in the North Park Shopping Center in Borger, Texas.

A copy of the Request for Proposals (RFP) can be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at 415 Southwest Eighth Ave., Amarillo, Texas 79101 or by contacting Leslie Hardin, PRPC's Workforce Development Facilities Coordinator at (806) 372-3381 or lhardin@theprpc.org. Proposals must be received at PRPC by 3:00 p.m. on Friday, March 12th, 2021.

TRD-202100418

Leslie Hardin

Workforce Development Contracts Coordinator

Panhandle Regional Planning Commission

Filed: January 29, 2021



Public Utility Commission of Texas

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 XIT Telecommunications and Technology, LTD to Amend its Designation as an Eligible Telecommunications Carrier, Docket Number 51690.

The Application: XIT Telecommunications 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.

XIT Telecommunications requests that its ETC designation be expanded to provide local and toll voice communications and broadband internet as part of the Federal Communications Commission 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 51690.

TRD-202100460

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Filed: February 3, 2021



Workforce Solutions Brazos Valley Board

Public Notice

Integrated Plan for Program Years 2021 - 2024

The Workforce Solutions Brazos Valley Board seeks public comment on their local strategic integrated plan for Program Years 2021 - 2024 (PY'21 - '24). This plan outlines the Board's strategic integrated plan for workforce service delivery that includes program services in Workforce Innovation and Opportunity Act (WIOA), Childcare Services (CCS), Temporary Assistance for Needy Families (TANF Choices), Supplemental Nutrition Assistance Program Employment Services (SNAP), Veterans Services, the Adult Education and Literacy (AEL) Program and the Non-Custodial Parent Choices Program (NCP

Choices). The updated Targeted Occupations List will also be included with the Plan. Interested parties can review a copy of this plan and the updated Targeted Occupations List at the Center for Regional Services office located at 3991 East 29th Street, Bryan Texas 77802 between 8:00 a.m. to 5:00 p.m., Monday through Friday, for the period of February 1, 2021 to February 16, 2021. Due to COVID, the Center for Regional Services building may be closed to the public. If the building is closed, please contact Barbara Clemmons via phone at (979) 595-2801 ext. 2061 or via email at bcllemmons@bvcog.org to review the document. The integrated plan will also be available for review on the website www.bvjobs.org under the Board tab. Questions about the integrated plan can be directed to Vonda Morrison at vmorrison@bvcog.org.

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TRD-202100406

Vonda Morrison

Program Manager

Workforce Solutions Brazos Valley Board

Filed: January 28, 2021



Workforce Solutions for the Heart of Texas

The Heart of Texas Workforce Development Board, Inc. Draft Board Plan for Program Year 2021 - 2024

Notice to Public

The Heart of Texas Workforce Development Board, Inc. (Board) hereby provides notice of the availability of the draft Board Plan for Program Years 2021 - 2024. The Board is responsible for the planning, oversight, and implementation of federally funded workforce development programs throughout the region which includes the counties of Bosque, Falls, Freestone, Hill, Limestone, and McLennan. The final plan will be submitted to the Texas Workforce Commission by March 1, 2021. A copy of the draft Board Plan will be made available on the Board's website Publications page at <https://www.hotworkforce.com/home/about-us/publications/> beginning Friday, January 29, 2021. Interested parties may obtain a copy of the draft Board Plan by contacting Judy Hedge at (254) 296-5393 between 8:00 a.m. and 5:00 p.m. Monday through Friday or via e-mail at judy.hedge@hotworkforce.com.

Comments regarding the plan may be submitted in writing to the address below, faxed to (254) 753-3173 or sent via e-mail to eunice.fernandez@hotworkforce.com no later than 1:00 p.m. on Friday, February 12, 2021. All comments will be addressed in the final plan submitted to the Texas Workforce Commission.

Heart of Texas Workforce Development Board, Inc.

Administrative Office 801 Washington Avenue, Suite 700

Waco, Texas 76701

The Heart of Texas Workforce Development Board, Inc. is an equal opportunity employer/programs and auxiliary aids and services are available upon request to include individuals with disabilities. TTY/TDD via RELAY Texas services at 711 or (TDD) 1-800-735-2989/ 1-800-735-2988 (Voice).

TRD-202100407

Anthony Billings
Executive Director
Workforce Solutions for the Heart of Texas
Filed: January 29, 2021



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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