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# TEXAS REGISTER

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# TEXAS REGISTER

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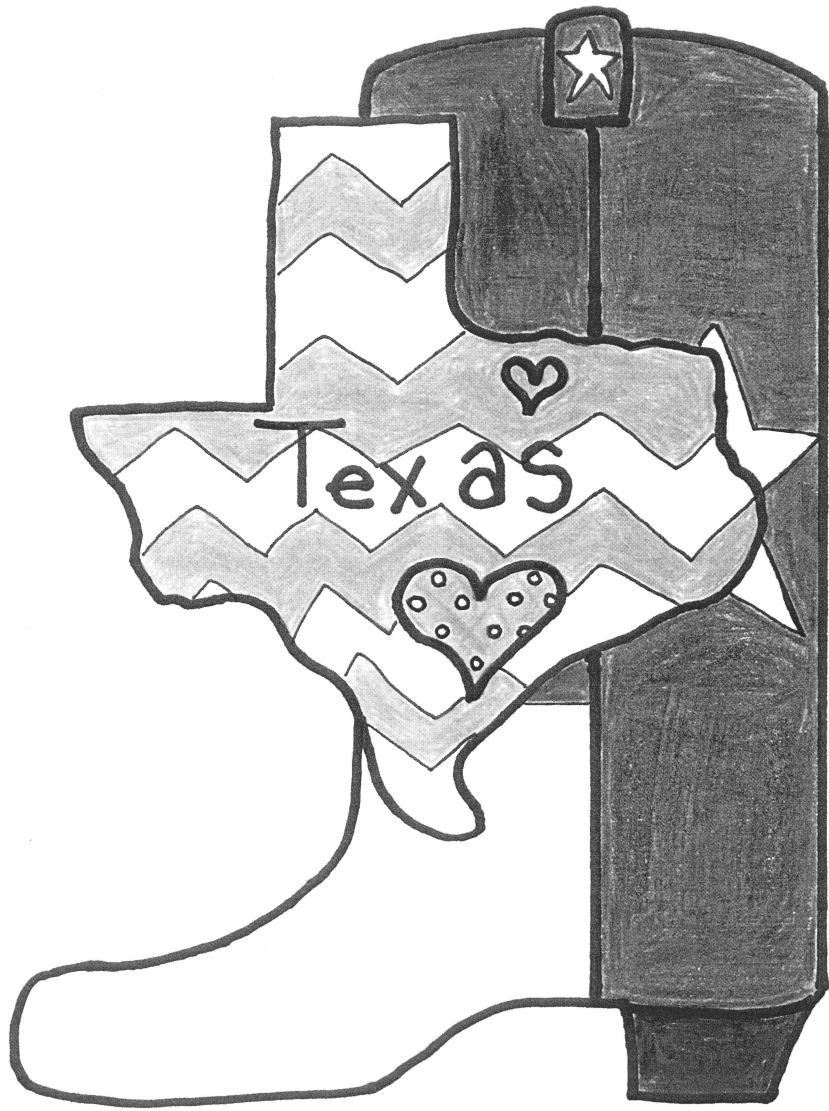
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# THE GOVERNOR

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.

Proclamation 41-3806

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

WHEREAS, the death of the Honorable Ron Wright has created a vacancy in the U.S. House of Representatives for the 6th Congressional District of Texas, which consists of all or parts of Ellis, Navarro, and Tarrant counties; and

WHEREAS, Article I, Section 2 of the U.S. Constitution and Section 204.021 of the Texas Election Code require that a special election be ordered upon such a vacancy, and Title 2, Section 8 of the U.S. Code requires that the date of such election be as prescribed by state law; and

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

WHEREAS, Section 203.004(a) of the Texas Election Code provides that the special election generally must be held on the first uniform date occurring on or after the 36th day after the date the election is ordered; and

WHEREAS, pursuant to Section 41.001 of the Texas Election Code, the first uniform election date occurring on or after the 36th day after the date the special election is ordered is Saturday, May 1, 2021;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in Congressional

District 6 on Saturday, May 1, 2021, for the purpose of electing a U.S. Representative for Congressional District 6 to serve out the unexpired term of the Honorable Ron Wright.

Candidates who wish to have their names placed on the special election ballot must file their applications with the Secretary of State no later than 5:00 p.m. on Wednesday, March 3, 2021.

Early voting by personal appearance shall begin on Monday, April 19, 2021, and end on Tuesday, April 27, 2021, in accordance with Sections 85.001(a) and (e) of the Texas Election Code.

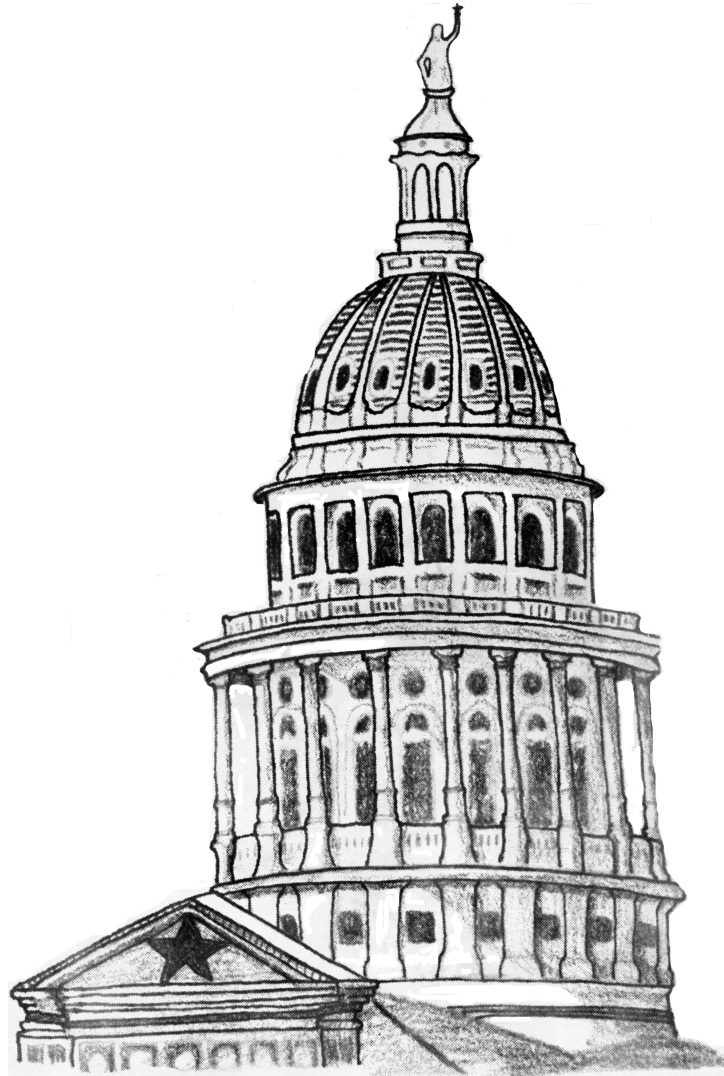
A copy of this order shall be mailed immediately to the County Judges of all counties contained within Congressional District 6, and all appropriate writs shall be issued and all proper proceedings shall be followed to the end that said special election may be held to fill the vacancy in Congressional District 6 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 23rd day of February, 2021.

Greg Abbott, Governor

TRD-202100759







# 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-0353

Sherif Zaafran, M.D.

President

Texas Medical Board

Post Office Box 2018

Austin, Texas 78768-2018

Re: Whether chapter 157 of the Occupations Code requires a physician to provide any level of supervision to a certified registered nurse anesthetist to whom the physician has delegated authority, and the potential liability for such delegation (RQ-0371-KP)

#### S U M M A R Y

Section 157.058 of the Occupations Code does not, by itself, require a physician who properly delegates anesthesia-related tasks to a certified registered nurse anesthetist ("CRNA") to supervise the performance of those acts. Whether and the extent to which physician supervision is required for an act delegated to a CRNA will depend on the specific act delegated, the type of facility in which that task is performed, and any relevant regulations of that facility.

Questions of physician liability in any specific context are highly factual and not an appropriate determination for the opinion process.

### Opinion No. KP-0354

The Honorable Eddie Arredondo

Burnet County Attorney

220 South Pierce

Burnet, Texas 78611

Re: Punishment for a violation of the maximum vehicle weight limit established by the executive director of the Texas Department of Transportation under Transportation Code section 621.102 (RQ-0373-KP)

#### S U M M A R Y

While section 621.101 of the Transportation Code specifies maximum weight limitations for vehicles operating over or on a public highway or certain ports-of-entry, section 621.102 authorizes the executive director of the Department of Transportation to set different limitations that do not exceed these maximums. Section 621.506 provides a graduated schedule of penalties for violating specified maximum weight statutes but does not include section 621.102. Because no statute specifies the

penalty for violating section 621.102, operating a vehicle in excess of the maximum weight set by the executive director under that section is subject to the catch-all penalties in section 621.507.

### Opinion No. KP-0355

The Honorable Bob Wortham

Jefferson County Criminal District Attorney

1085 Pearl Street, 3rd Floor

Beaumont, Texas 77701

Re: Whether a conflict of interest exists under chapter 171 of the Local Government Code when a city council member votes to waive interest on delinquent property taxes accrued by an unrelated person under particular circumstances (RQ-0374-KP)

#### S U M M A R Y

The conflict-of-interest requirements of section 171.004(a) of the Local Government Code do not apply to a city council member voting on a county matter even though the council member is married to the county tax assessor-collector.

### Opinion No. KP-0356

The Honorable Charles Perry

Chair, Committee on Water & Rural Affairs

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Boundary line between the High Plains Underground Water Conservation District and the Panhandle Groundwater Conservation District (RQ-0375-KP)

#### S U M M A R Y

An appraisal district may not determine or correct the boundaries of a taxing unit.

With respect to the potential boundaries presented by the High Plains Underground Water Conservation District and the Panhandle Groundwater Conservation District, the determination of the exact boundary line between them in Potter County will involve the resolution of fact issues and is outside the purview of an attorney general opinion. We can only generally advise that in recreating the initial meander line in order to determine its location and to consider all subsequent events to determine the current boundary, a court would likely look for the orig-

inal intent with respect to the meaning of "meanders of the caprock" and establish the meander line consistent with that intent.

**Opinion No. KP-0357**

The Honorable Joe Gonzales

Bexar County Criminal District Attorney

101 West Nueva

San Antonio, Texas 78205

Re: Jurisdiction of a criminal district attorney to prosecute federal officials who violate criminal provisions of the Election Code (RQ-0376-KP)

**S U M M A R Y**

Determining whether authority exists to prosecute in any specific situation requires multiple factual determinations, which are outside the scope of the opinion process of this office.

The Sixth Amendment to the U.S. Constitution and article 33.03 of the Code of Criminal Procedure establish a right of the accused to be present in the courtroom through the conclusion of trial proceedings. Under article 33.03, an accused's right to be present at his trial is unwaivable even by the accused until such a time as the jury has been selected.

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-202100742

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: February 23, 2021



# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Advisory Opinion Requests/Questions

Whether an officer of a political subdivision may use public funds to print and affix graphic designs to bicycle-sharing stations, hats, t-shirts, and water bottles that identify the public official by name, office, and include the following statement: "Funding for this Station Provided by [the requestor]." (AOR-638)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or [opinions@ethics.state.tx.us](mailto:opinions@ethics.state.tx.us).

Issued February 24, 2021.

TRD-202100765

J.R. Johnson  
General Counsel  
Texas Ethics Commission  
Filed: February 24, 2021



May a judicial officer take--or coordinate the taking of--photographs of his courtroom for use in political advertisements? Does it make a difference if the photographs are taken from the gallery, the area in front of the bench, or behind the bench?

May a judicial officer use, for political advertisements, photographs that are created without his cooperation or coordination and published in the public domain, even if they show the judge behind the bench? (AOR-639)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or [opinions@ethics.state.tx.us](mailto:opinions@ethics.state.tx.us).

Issued in Austin, Texas, on February 24, 2021.

TRD-202100766

J.R. Johnson  
General Counsel  
Texas Ethics Commission  
Filed: February 24, 2021



Whether an officer or employee of a political subdivision may display a political advertisement--for example, by wearing a facemask or other visible article of clothing with a campaign logo or slogan printed on it--during a public meeting that is streamed or posted on the Internet. (AOR-640-CI)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or [opinions@ethics.state.tx.us](mailto:opinions@ethics.state.tx.us).

Issued in Austin, Texas, on February 24, 2021.

TRD-202100767

J.R. Johnson  
General Counsel  
Texas Ethics Commission  
Filed: February 24, 2021



Whether certain written communications, created by a political subdivision and related to the political subdivision's upcoming elections, constitute political advertisements for purposes of the Election Code's prohibition against using public funds for political advertising. Tex. Elec. Code §255.003(a). (AOR-641)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or [opinions@ethics.state.tx.us](mailto:opinions@ethics.state.tx.us).

Issued in Austin, Texas, on February 24, 2021.

TRD-202100770  
J.R. Johnson  
General Counsel  
Texas Ethics Commission  
Filed: February 24, 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 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 108. PROFESSIONAL CONDUCT

##### SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

###### 22 TAC §108.7

The State Board of Dental Examiners (Board) adopts on an emergency basis an amendment to 22 TAC §108.7, concerning Minimum Standard of Care, General, in response to the COVID-19 disaster declaration. The amendment dictates the minimum standards for safe practice during the COVID-19 disaster.

This rule is adopted on an emergency basis due to the imminent peril to the public health, safety and welfare caused by failure to adhere to the minimum standards for safe practice during the COVID-19 pandemic.

The emergency rule amendment is applicable only for purposes of the COVID-19 disaster declaration and shall only remain effective until the COVID-19 disaster declaration is terminated.

The emergency rule amendment is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

In addition, the emergency rule amendment is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

The statutes affected by this rule: Dental Practice Act, Chapters 251 and 263, Texas Occupations Code.

###### *§108.7. Minimum Standard of Care, General.*

Each dentist shall:

- (1) conduct his/her practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstances;
- (2) maintain patient records that meet the requirements set forth in §108.8 of this title (relating to Records of the Dentist);
- (3) maintain and review an initial medical history and perform a limited physical evaluation for all dental patients;
  - (A) The medical history shall include, but shall not necessarily be limited to, known allergies to drugs, serious illness, current

medications, previous hospitalizations and significant surgery, and a review of the physiologic systems obtained by patient history. A "check list," for consistency, may be utilized in obtaining initial information. The dentist shall review the medical history with the patient at any time a reasonable and prudent dentist would do so under the same or similar circumstances.

(B) The limited physical examination shall include, but shall not necessarily be limited to, measurement of blood pressure and pulse/heart rate. Blood pressure and pulse/heart rate measurements are not required to be taken on any patient twelve (12) years of age or younger, unless the patient's medical condition or history indicate such a need.

(4) obtain and review an updated medical history and limited physical evaluation when a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a medical history and limited physical evaluation should be obtained and reviewed at the initial appointment and updated annually;

(5) for office emergencies:

(A) maintain a positive pressure breathing apparatus including oxygen which shall be in working order;

(B) maintain other emergency equipment and/or currently dated drugs as a reasonable and prudent dentist with the same or similar training and experience under the same or similar circumstances would maintain;

(C) provide training to dental office personnel in emergency procedures which shall include, but not necessarily be limited to, basic cardiac life support, inspection and utilization of emergency equipment in the dental office, and office procedures to be followed in the event of an emergency as determined by a reasonable and prudent dentist under the same or similar circumstances; and

(D) shall adhere to generally accepted protocols and/or standards of care for management of complications and emergencies;

(6) successfully complete a current course in basic cardiopulmonary resuscitation given or approved by either the American Heart Association or the American Red Cross;

(7) maintain a written informed consent signed by the patient, or a parent or legal guardian of the patient, if the patient is a minor, or the patient has been adjudicated incompetent to manage the patient's personal affairs. A signed, written informed consent is required for all treatment plans and procedures where a reasonable possibility of complications from the treatment planned or a procedure exists, or the treatment plans and procedures involve risks or hazards that could influence a reasonable person in making a decision to give or withhold consent. Such consents must disclose any and all complications, risks and hazards;

(8) safeguard patients against avoidable infections as required by this chapter;

(9) not be negligent in the provision of dental services;

- (10) use proper diligence in the dentist's practice;
- (11) maintain a centralized inventory of drugs;
- (12) report patient death or hospitalization as required by this chapter;
- (13) abide by sanitation requirements as required by this chapter;
- (14) abide by patient abandonment requirements as required by this chapter;
- (15) abide by requirements concerning notification of discontinuance of practice as required by this chapter; and
- (16) conduct his/her practice according to the minimum standards for safe practice during the COVID-19 disaster pursuant to the Centers for Disease Control Guidelines and the following guidelines:

(A) Before dental treatment begins:

(i) each dental office shall create COVID-19 procedures and provide dental health care personnel (DHCP) training regarding the COVID-19 office procedures. These procedures must include the pre-schedule screening protocol, in office screening protocol for patients and DHCP, office's transmission-based infection control precautions, as well as protocol to be implemented if DHCP suspects an exposure to COVID-19;

(ii) DHCP experiencing influenza-like-illness (ILI) (fever with either cough or sore throat, muscle aches) should not report to work;

(iii) all DHCP should self-monitor by remaining alert to any respiratory symptoms (e.g., cough, shortness of breath, sore throat) and check their temperature twice a day, regardless of the presence of other symptoms consistent with a COVID-19 infection;

(iv) contact your local health department immediately if you suspect a patient has COVID-19, to prevent transmission to DHCP or other patients;

(v) place signage in the dental office for instructing staff and patients on standard recommendations for respiratory hygiene/cough etiquette and social distancing;

(vi) develop and utilize an office protocol to screen all patients during patient confirmation prior to appointment;

(vii) schedule appointments apart enough to minimize possible contact with other patients in the waiting room;

(viii) Patient companions should be screened for signs and symptoms of COVID-19 during patient check-in.

(B) During dental care:

(i) perform in office screening protocol which must include a temperature check, upon patient arrival;

(ii) DHCP shall adhere to standard precautions, which include but are not limited to: hand hygiene, use of personal protective equipment (PPE), respiratory hygiene/etiquette, sharps safety, safe injection practices, sterile instruments and devices, clean and disinfected environmental surfaces;

(iii) DHCP shall implement Transmission-Based Precautions, including N-95 respirator masks, KN-95 masks, or their substantial equivalent for all DHCP who will be within six (6) feet of any and all procedures likely to involve aerosols;

(iv) DHCP shall adhere to the standard sequence of donning and doffing of PPE;

(C) Clinical technique:

(i) Reduce aerosol production as much as possible, as the transmission of COVID-19 seems to occur via droplets or aerosols, DHCP may prioritize the use of hand instrumentation;

(ii) DHCP should use dental isolation if an aerosol-producing procedure is being performed to help minimize aerosol or spatter.

(D) After dental care is provided:

(i) instruct patients to contact the office if they experience COVID-19 symptoms within 7 days after the dental appointment;

(ii) DHCPs should remove PPE before returning home.

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 19, 2021.

TRD-202100683

Lauren Studdard

General Counsel

State Board of Dental Examiners

Effective date: February 19, 2021

Expiration date: June 18, 2021

For further information, please call: (512) 305-8910



**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

**CHAPTER 47. PRIMARY HOME CARE, COMMUNITY ATTENDANT SERVICES, AND FAMILY CARE PROGRAMS**

**SUBCHAPTER C. STAFF REQUIREMENTS**

**40 TAC §47.25**

The Department of Aging and Disability Services is renewing the effectiveness of emergency amended §47.25 for a 60-day period. The text of the emergency rule was originally published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7798).

Filed with the Office of the Secretary of State on February 23, 2021.

TRD-202100733

Karen Ray  
Chief Counsel  
Department of Aging and Disability Services  
Original effective date: October 27, 2020  
Expiration date: April 24, 2021  
For further information, please call: (512) 438-2578



**SUBCHAPTER E. SERVICE REQUIREMENTS**  
**40 TAC §47.65**

The Department of Aging and Disability Services is renewing the effectiveness of emergency amended §47.65 for a 60-day period. The text of the emergency rule was originally published in

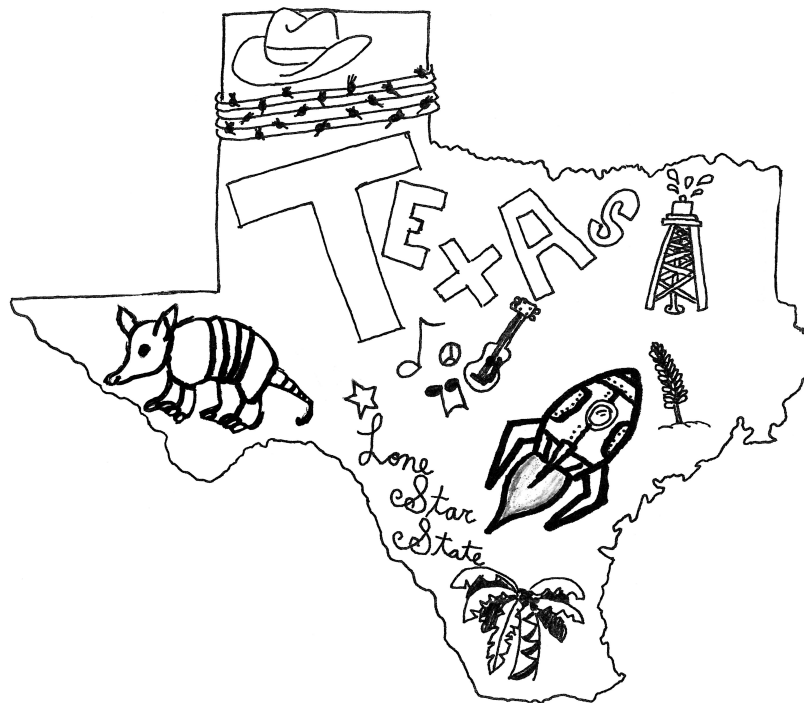
the November 6, 2020, issue of the *Texas Register* (45 TexReg 7799).

Filed with the Office of the Secretary of State on February 23, 2021.

TRD-202100734

Karen Ray  
Chief Counsel  
Department of Aging and Disability Services  
Original effective date: October 27, 2020  
Expiration date: April 24, 2021  
For further information, please call: (512) 438-2578







# 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 1. OFFICE OF THE GOVERNOR

#### CHAPTER 3. PUBLIC SAFETY OFFICE

##### [CRIMINAL JUSTICE DIVISION]

The Office of the Governor ("OOG") proposes amendments to 1 TAC §§3.1, concerning Applicability, 3.3, concerning Definitions, 3.5, concerning Submission Process, 3.7, concerning Selection Process, 3.9, concerning Funding Decisions, 3.11, concerning Grant and Supplemental Award Acceptance, 3.21, concerning Use of the Internet, 3.23, concerning Delegation of Authority, 3.73, concerning Matching Funds Policy, 3.75, concerning Personnel, 3.79, concerning Travel and Training, 3.81, concerning Equipment, 3.85, concerning Indirect Costs, 3.87, concerning Program Income, 3.2001, concerning Conditions of Funding, 3.2009, concerning Cooperative Working Agreement, 3.2013, concerning Pre-Approval Requirements for Procurement, 3.2021, concerning Resolutions, 3.2025, concerning Civil Rights Liaison, 3.2501, concerning Grant Officials, 3.2503, concerning Obligating Funds, 3.2505, concerning Retention of Records, 3.2507, concerning Financial Status Reports, 3.2509, concerning Equipment Inventory Reports, 3.2513, concerning Grant Adjustments, 3.2515, concerning Bonding, 3.2517, concerning Remedies for Noncompliance, 3.2519, concerning Grant Reduction or Termination, 3.2523, concerning Violations of Laws, 3.2525, concerning Evaluating Project Effectiveness, 3.2527, concerning Grantee Reports, 3.2529, concerning Grant Management, 3.2601, concerning Monitoring, 3.2603, concerning Audits Not Performed by CJD or COD, 3.8105, concerning General Powers, 3.8115, concerning Meetings, and 3.8305, concerning General Powers. The OOG identified the necessity of the proposed amendments during the Governor's Office's periodic review of 1 TAC Chapter 3, conducted pursuant to Texas Government Code §2001.039. The proposed amendments will harmonize rules with the structure and organization of the OOG, improve readability and clarity, and update rules to account for technological advancements within grant processes.

##### EXPLANATION OF PROPOSED AMENDMENTS

The rules under consideration relate to grant programs under the Criminal Justice Division and the Public Safety Office ("PSO") of the OOG.

The proposed amendments to §3.3 add definitions for additional committees, teams, and divisions within the OOG. The amendments also provide definitions for "eGrants system" and "simplified acquisition threshold." The amendments further relocate matching funds requirements from the definition of "matching funds" to §3.73.

The proposed amendments to §3.5 enable requests for applications to be posted on eGrants in addition to the *Texas Register*.

The proposed amendments to §3.7 clarify funding decision factors by providing more specificity.

The proposed amendments to §3.73 relocate requirements related to matching funds from the definition of "matching funds" in §3.3 to the rule governing the matching funds policy.

The proposed amendments to §3.75 clarify the rule and remove outdated language.

The proposed amendments to §3.79 clarify the rule and remove outdated language.

The proposed amendments to §3.81 remove an outdated provision.

The proposed amendments to §3.85 clarify language regarding indirect cost, and changes the permissible indirect cost rate from two percent to ten percent to mirror federally-accepted standards.

The proposed amendments to §3.2013 modifies the circumstance in which a grantee must submit a completed procurement questionnaire. Previously, a grantee would have to submit a completed procurement questionnaire when a procurement would exceed \$150,000. Under the amendment, a grantee must submit a completed procurement questionnaire when the procurement exceeds the simplified acquisition threshold, as-defined in the amendments to §3.3.

The proposed amendments to §3.2021 relocate a provision requiring certain grantees to submit a new resolution when there is a change in a grant's designated authorized official to a new subsection (b). The amendments add conforming changes in response to the addition of the new subsection.

The proposed amendments to §3.2503 clarify the period of the grant.

The proposed amendments to §3.2505 clarify the record retention period for all financial records, supporting documents, statistical records, and all other records pertinent to the award.

The proposed amendments to §3.2519 clarify that the listed circumstances for termination constitute a non-exhaustive list of instances in which a grant may be terminated.

The proposed amendments to §3.2603 create a requirement to submit a Certification of Single Audit Reporting Requirement Exemption form in certain instances.

The proposed amendments to §3.8105 update statutory references.

The remaining proposed amendments replace the abbreviation "CJD" with "PSO" to reflect the structure and organization of

the PSO. The remaining proposed amendments also clarify or remove outdated or unnecessary language from the rules, including using the word "shall" or "must" when provisions require certain behaviors or actions, and replacing the word "wishes" with "seeks" when describing instances in which an applicant or grantee intends to take a contemplated action.

#### FISCAL NOTE

Aimee Snoddy, Executive Director, Public Safety Office, has determined that during each year of the first five years in which the proposed amendments are in effect, there will be no expected fiscal impact on state and local governments as a result of enforcing or administering the proposed amendments.

Ms. Snoddy does not anticipate any measureable effect on local employment or the local economy as a result of the proposed amendments.

#### PUBLIC BENEFIT AND COSTS

Ms. Snoddy has also determined that during each year of the first five years in which the proposed amendments are in effect, the public benefits anticipated as a result of the amendments are publication of the structure of the PSO within OOG, clarification regarding eGrants and simplified acquisition thresholds, and enhanced allowable indirect costs.

Ms. Snoddy has determined there are no measurable anticipated economic costs to persons required to comply with the proposed amendments.

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Snoddy has determined that during each year of the first five years in which the proposed amendments are in effect, the amendments:

- 1) will not create or eliminate a government program;
- 2) will not require the creation of new employee positions or the elimination of existing employee positions;
- 3) will not require an increase or decrease in future legislative appropriations to the OOG;
- 4) will not require an increase or decrease in fees paid to the OOG;
- 5) do not create a new regulation;
- 6) will expand, limit, or repeal a existing regulations;
- 7) will not increase or decrease the number of individuals subject to the applicability of the rules; and
- 8) will not positively or adversely affect the Texas economy.

#### TAKINGS IMPACT ASSESSMENT

The OOG has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to the owner's private real property that would otherwise exist in the absence of government action. As a result, the proposed

amendments do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### SUBMISSION OF COMMENTS

Written comments regarding the proposed rule amendments may be submitted to Stephanie Greger, Assistant General Counsel, Office of the Governor, P.O. Box 12428, Austin, Texas 78711 or by email to [stephanie.greger@gov.texas.gov](mailto:stephanie.greger@gov.texas.gov) with the subject line "Criminal Justice Division Rule Review." The deadline for receipt of comments is 5:00 p.m., Central Time, on April 4, 2021.

### SUBCHAPTER A. GENERAL GRANT PROGRAM PROVISIONS

#### 1 TAC §§3.1, 3.3, 3.5, 3.7, 3.9, 3.11, 3.21, 3.23

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §772.006(a)(10), which provides that the OOG shall adopt rules necessary to implement the requirements of Texas Government Code, §772.006.

#### CROSS REFERENCE TO STATUTE

Chapter 3, Subchapter A. No other statutes, articles, or codes are affected by the proposed amendments.

##### §3.1. *Applicability.*

Subchapters A through F of this chapter apply to all applications for funding and grants submitted to the Public Safety Office (PSO) [~~Criminal Justice Division (CJD)~~], Office of the Governor (OOG). A PSO-funded grantee must comply with the provisions of Subchapters A through F in effect on the date the grant is awarded by the OOG [~~CJD~~], unless a subsequent effective date is specified by the OOG [~~CJD~~] in an original grant award or a grant adjustment. Grantees must comply with all applicable state and federal statutes, rules, regulations, and guidelines. In instances where both federal and state requirements apply to a grantee, the more restrictive requirement applies.

##### §3.3. *Definitions.*

(a) applicant: an agency or organization that has submitted a grant application or grant renewal documentation;

(b) approved budget categories: budget categories (including personnel, contractual and professional services, travel, equipment, construction, supplies and other direct operating expenses, and indirect costs) that contain a line item with a dollar amount greater than zero that is approved by the OOG [~~CJD~~] through a grant award or a budget adjustment;

(c) CJAC: Criminal Justice Advisory Committee, a component of a COG. A CJAC must have a multi-disciplinary representation of members from the region. This representation must contain members from the following groups: [~~concerned~~] citizens or parents, counties, municipalities, substance [~~drug~~] abuse prevention, education, juvenile justice, law enforcement, mental health, nonprofit organizations, prosecution or [~~]~~ courts, and victim services. No single group or discipline may constitute more than one-third (1/3) of the CJAC;

~~{(d) CJD: The Criminal Justice Division of the Office of the Governor or its designee;}~~

~~{(e) COD: The Compliance and Oversight Division of the Office of the Governor or its designee;}~~

(d) ~~{(f)}~~ COG: a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Texas Local Government Code;

(e) ~~[(g)]~~ computing devices: machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information;

(f) ~~[(h)]~~ condition of funding: a prerequisite placed on a grant because of a need for information, clarification, or submission of an outstanding requirement of the grant that may result in a hold being placed on the OOG ~~[CJD]~~-funded portion of a grant project;

(g) eGrants: the online grant management system used by PSO grant programs;

(h) ~~[(i)]~~ equipment: tangible personal property (including information technology systems) having a useful life of more than one year and a per unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the grantee for financial statement purposes or \$5,000;

(i) ~~[(j)]~~ executive director: the executive director of PSO who also serves in the capacity required by Texas Government Code 772.006(b) ~~[CJD]~~;

(j) ~~[(k)]~~ grant funds: OOG ~~[CJD]~~-funded and matching funds portions of a grant project;

(k) ~~[(l)]~~ grantee: an applicant ~~[agency or organization]~~ that receives a grant award;

(l) HSAC: Homeland Security Advisory Committee, a component of a COG. HSACs must consist of representatives from counties, municipalities, non-profit organizations, disciplines, and/or other stakeholders from within the region who are knowledgeable about terrorism preparedness and the threats, vulnerabilities and consequences relevant to the COG region;

(m) indirect costs: those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved;

(n) information technology systems: computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources;

(o) liquidation date: the date specified in an original grant award or a subsequent grant adjustment upon which a grantee must expend all outstanding liabilities;

(p) matching funds: the grantee's share of the project costs. [Matching funds may either be cash or in-kind. Cash match includes actual cash spent by the grantee and must have a cost relationship to the award that is being matched. In-kind match includes the value of donated services. An applicant's use of matching funds must comply with the same statutes, rules, regulations, and guidelines applicable to the use of the CJD-funded portion of a grant project];

(q) OCM: the Office of Compliance and Monitoring of the OOG;

(r) ~~[(q)]~~ OMB: the Executive Office of the President of the United States, Office of Management and Budget;

(s) OOG: the Office of the Governor;

(t) ~~[(r)]~~ program income: gross income earned by the grantee that is directly generated by a supported activity of the grant or earned as a result of the grant award during the period of performance. Program income includes, but is not limited to, forfeitures, fees for services performed, the use of rental or real or personal property acquired under an award, the sale of commodities or items fabricated under an award, and license fees and royalties on patents and copyrights. Interest earned

on advances of grant funds is not program income. Except as otherwise provided in applicable law, regulations or the terms and conditions of the award, program income does not include rebates, credits, discounts and interest earned on any of them;

(u) PSO: the Public Safety Office of the OOG. The PSO includes the following divisions:

(1) CJD: the Criminal Justice Division;

(2) CSTT: the Child Sex Trafficking Team;

(3) GAD: the Grants Administration Division; and

(4) HSGD: the Homeland Security Grants Division;

(v) ~~[(s)]~~ RFA: Request for Applications, published in either eGrants or the Texas Register by PSO ~~[CJD]~~;

(w) simplified acquisition threshold: the dollar amount below which an entity may purchase property or services using small purchase methods. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908;

(x) ~~[(t)]~~ supplies: all tangible personal property other than those described in accordance with §3.3(h)(t) of this chapter. A computing device is a supply if the acquisition cost is less than the lesser of the capitalizations level established by the grantee for financial statement purposes or \$5,000, regardless of the length of its useful life; and

(y) ~~[(u)]~~ UGMS: the Uniform Grant Management Standards or the Texas Grant Management Standards, as applicable.

### §3.5. Submission Process.

(a) When applying for a grant pursuant to a RFA published by the PSO in either eGrants or the *Texas Register* ~~[by CJD]~~, applicants must submit and certify their applications according to the requirements provided in the RFA.

(b) Applications ~~[CJD may also consider application]~~ for grants that are not submitted pursuant to an RFA may also be considered. Applicants shall ~~[will]~~ be selected in accordance with §3.7(b) of this chapter.

(c) Applicants must apply for funds using the procedures, forms, and certifications prescribed by PSO ~~[CJD]~~.

### §3.7. Selection Process.

(a) All applications must be submitted ~~[to CJD]~~ and certified by the applicant's authorized official. For applications submitted and certified pursuant to an RFA, the PSO ~~[executive director]~~ may select a review group, COG, or other designee to prioritize the applications and submit a priority listing to the PSO ~~[executive director, who will render the final funding decision]~~.

(b) PSO funding decisions shall be ~~[For applications certified by the applicant's authorized official, the executive director will decide whether to fund the application]~~ based upon the following factors:

(1) cost effectiveness ~~[the inherent value of the project's impact];~~

(2) overall funding availability ~~[whether the project has the potential to be a model program];~~ ~~[or]~~

(3) PSO or state government priorities and strategies;

(4) legislative directives;

(5) identified gaps in services or resources;

(6) geographic distributions;

- (7) the inherent value of the project's impact;
- (8) whether the project has the potential to be a model program;
- (9) [(3)] whether delaying the project would have a significant negative impact on the area proposed to be served; and
- (10) to the extent applicable, any additional factors listed in an RFA.

(c) For applications prioritized by a COG, the CJAC or HSAC, as appropriate, must prioritize the applications and prepare the priority listing. The COG's governing body must approve the priority listing. The OOG shall [CJD will] make final decisions on these applications based upon factors listed in subsection (b) of this section.

(d) During the review of an application, applicants may be instructed to [CJD may request that the applicant] submit [any] additional information necessary to complete the grant review. Such requests for information do not serve as notice that the OOG [CJD] intends to fund an application. PSO [CJD] may make the necessary corrections to an application to bring it into compliance with state or federal requirements. Any corrections to an applicant's budget shall [will] be reflected in the award documentation.

(e) Applicants shall be informed [CJD will inform applicants] of decisions on their grant applications through either a Statement of Grant Award or a notification of denial. [For applications prioritized by a COG that do not receive funding recommendations, the COG notification of the decision not to recommend funding serves as the applicant's notification of denial.]

§3.9. *Funding Decisions.*

(a) All funding decisions made by the OOG [executive director] are final and are not subject to appeal. The receipt of an application [by CJD] does not obligate the OOG [CJD] to fund the grant or to fund it at the amount requested.

(b) Neither the approval of a project nor any grant award shall obligate the OOG [CJD] in any way to make any additional, supplemental, continuation, or other award.

§3.11. *Grant and Supplemental Award Acceptance.*

The award documentation constitutes obligation of funds for use by the grantee in execution of the program or project covered by the award. Such obligation may be terminated without cause if the grantee's authorized official fails to accept the grant award within 45 calendar days of the date on which the OOG [CJD] issues the Statement of Grant Award. PSO [CJD] may extend this deadline upon [en] written request from the applicant. Funds shall [will] not be disbursed until acceptance of the grant by the grantee's authorized official [grantee].

§3.21. *Use of the Internet.*

Applicants and grantees must [CJD requires an applicant or grantee to] submit grant applications, progress reports, financial reports, and other information, as applicable, to PSO [CJD] via the Internet or other electronic means.

§3.23. *Delegation of Authority.*

The executive director may delegate his or her authority or PSO's [CJD's] authority under this chapter.

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

Filed with the Office of the Secretary of State on February 22, 2021.

TRD-202100719  
 Aimee Snoddy  
 Executive Director, Public Safety Office  
 Office of the Governor  
 Earliest possible date of adoption: April 4, 2021  
 For further information, please call: (512) 463-2000



## SUBCHAPTER B. GRANT BUDGET REQUIREMENTS

### 1 TAC §§3.73, 3.75, 3.79, 3.81, 3.85, 3.87

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §772.006(a)(10), which provides that the OOG shall adopt rules necessary to implement the requirements of Texas Government Code, §772.006.

#### CROSS REFERENCE TO STATUTE

Chapter 3, Subchapter B. No other statutes, articles, or codes are affected by the proposed amendments.

§3.73. *Matching Funds Policy.*

(a) If matching funds are required on a grant, an applicant must ensure that it possesses or can acquire the required matching funds. A contractor or participating entity may contribute toward the matching funds requirement, but the applicant bears the responsibility for satisfying the matching funds requirement.

(b) Matching funds may either be cash or in-kind. Cash match includes actual cash spent by the grantee and must have a cost relationship to the award that is being matched. In-kind match includes the value of donated services. An applicant's use of matching funds must comply with the same statutes, rules, regulations, and guidelines applicable to the use of the OOG-funded portion of a grant project.

§3.75. *Personnel.*

(a) PSO [CJD] shall determine the reasonableness of requested salaries and reserves the right to limit the OOG [CJD]-financed portion of any salary.

(b) The OOG [CJD] shall not pay any portion of the salary of, or any other compensation for, an elected or appointed government official.

(c) Compensation for grant-funded employees must be comparable to that of non-grant-funded employees performing similar work duties.

(d) Grantees may use grant funds to compensate staff members leaving employment for accrued leave (which includes, but is not limited to, annual leave, compensatory time, and sick leave) in accordance with the grantee's policy. These payments may only fund leave earned during the current grant period. The proportion of grant funds used to pay [paid] for leave cannot exceed the proportion of grant funds used to pay the staff member's salary.

§3.79. *Travel and Training.*

(a) Grant funds used for travel expenses must be used only in accordance with [limited to] the grantee's [grantee agency's] established travel policies [mileage, per diem, and lodging policies]. If a grantee does not have established travel [mileage, per diem, and lodging] policies, then the grantee must use rates that are consistent with the state travel guidelines.

(b) Grantees must maintain records that properly document the completion of all grant-funded training courses.

§3.81. *Equipment.*

[(a)] Applicants must include a detailed description of all proposed equipment purchases in their grant applications [application to CJD] for approval. Grantees must request any additional equipment purchases through grant adjustments.

[(b)] CJD will not approve grant funds to purchase vehicles or equipment for governmental agencies that are for general agency use. The Edward Byrne Justice Assistance Grant Program and the County Essential Services Grant Program are exempt from this subsection.]

§3.85. *Indirect Costs.*

(a) If the applicant has an approved federally-recognized indirect cost rate negotiated between the applicant and the federal [Federal] government and seeks [wishes] to charge indirect costs to the grant, the applicant shall identify the indirect cost rate and provide supporting documentation as part of the application [to CJD].

(b) If the applicant has a state- [an] approved indirect cost rate negotiated between the applicant and the applicable [its] state [ognizant] agency and seeks [wishes] to charge indirect costs to the grant, the applicant shall identify the indirect cost rate and provide supporting documentation as part of the application [to CJD].

(c) If the applicant has never received a federally-recognized [no approved federal] or state-approved indirect cost rate, [exists, CJD may approve] indirect costs may be approved in the grant project in an amount not to exceed ten [two] percent of the approved modified total direct costs.

(d) Unless otherwise specified, indirect costs are allowable under PSO [CJD] grants in accordance with applicable state and federal guidelines.

§3.87. *Program Income.*

Earned program income must be reported to PSO [CJD]. Program income may only be used, with prior approval from PSO [CJD], for allowable project costs as reflected in an approved budget. Grantees may not carry forward program income from one grant year to the next. Grantees must refund to the OOG [CJD] any program income remaining at the end of the grant period.

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 22, 2021.

TRD-202100721

Aimee Snoddy

Executive Director, Public Safety Office

Office of the Governor

Earliest possible date of adoption: April 4, 2021

For further information, please call: (512) 463-2000



SUBCHAPTER D. CONDITIONS OF GRANT FUNDING

1 TAC §§3.2001, 3.2009, 3.2013, 3.2021, 3.2025

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §772.006(a)(10), which provides that the OOG shall adopt rules necessary to implement the requirements of Texas Government Code, §772.006.

CROSS REFERENCE TO STATUTE

Chapter 3, Subchapter D. No other statutes, articles, or codes are affected by the proposed amendments.

§3.2001. *Conditions of Funding.*

When PSO [CJD] determines that a grantee has failed to submit the necessary information or has failed to comply with any applicable statute, rule, regulation, guideline, or requirement, PSO [CJD] may place a condition of funding on the grant which may invoke a hold on funds.

§3.2009. *Cooperative Working Agreement.*

(a) When a grantee intends to carry out a grant project by [through] cooperating or participating with one or more outside organizations, the grantee must ensure that the cooperative working agreement is signed by each participating organization. Grantees must maintain on file a signed copy of all cooperative working agreements.

(b) Cooperative working agreements do not involve an exchange of funds.

§3.2013. *Pre-Approval Requirements for Procurement.*

(a) A grantee must submit a PSO [CJD]-prescribed Procurement Questionnaire when any procurement is expected to exceed the simplified acquisition threshold [\$150,000] or upon [CJD] request. PSO [CJD] may also request all related procurement documentation, such as requests for proposals, invitations for bids, or independent cost estimates.

(b) Grantees may not divide purchases or contracts to avoid the requirements of this section. For purposes of determining compliance, PSO shall [CJD will] consider groups of contracts with a single vendor or groups of purchases for the same or similar items as a single procurement.

§3.2021. *Resolutions.*

(a) Applications from non-profit corporations, local units of governments and other political subdivisions must include a resolution that contains the following:

(1) authorization for the submission of the application [to CJD] that clearly identifies the project for which funding is requested;

(2) a commitment to provide for all applicable matching funds;

(3) a designation of the name or title of an authorized official who is given the power to apply for, accept, reject, alter, or terminate a grant[(if this designation changes during the grant period, a new resolution must be submitted to CJD)]; and

(4) a written assurance that, in the event of loss or misuse of grant funds, the governing body shall [will] return all funds to the OOG [CJD].

(b) If the designation under subsection (a)(3) of this section changes during the grant period, the grantee must submit a new resolution to the OOG.

§3.2025. *Civil Rights Liaison.*

If applicable, an applicant [All applicants] must certify that the applicant has[they have a] designated a civil rights liaison during the application process. The civil rights liaison shall [will] serve as the grantee's

civil rights point of contact [point] and has the responsibility for ensuring that the grantee meets all applicable civil rights requirements. The designee shall [will] act as the grantee's liaison in civil rights matters with the OOG [CJD] and with the federal Office of Justice Programs.

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

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Aimee Snoddy

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Office of the Governor

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## SUBCHAPTER E. ADMINISTERING GRANTS

**1 TAC §§3.2501, 3.2503, 3.2505, 3.2507, 3.2509, 3.2513, 3.2515, 3.2517, 3.2519, 3.2523, 3.2525, 3.2527, 3.2529**

### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §772.006(a)(10), which provides that the OOG shall adopt rules necessary to implement the requirements of Texas Government Code, §772.006.

### CROSS REFERENCE TO STATUTE

Chapter 3, Subchapter E. No other statutes, articles, or codes are affected by the proposed amendments.

#### §3.2501. Grant Officials.

(a) Each grant must have a project director, financial officer, and authorized official. No person shall serve in more than one capacity.

(b) Each grant official must have an e-mail address and access to the Internet.

(c) A grantee shall notify PSO [CJD] within 20 calendar days of any change in the designated project director, financial officer, or authorized official; any change in the mailing address, e-mail address, fax number, or telephone number of each grant official and any change in the grantee's physical address.

#### §3.2503. Obligating Funds.

A grantee may not obligate grant funds before the beginning or after the end of the grant period specified in an original grant award or a subsequent grant adjustment.

#### §3.2505. Retention of Records.

(a) Grantees must maintain all financial records, supporting documents, statistical records, and all other records pertinent to the award for at least three years following the submission of a final expenditure report or the closure of the most recent audit report, whichever is later [or submission of the final financial status report if the audit report requirement has been waived]. Grantees may retain records in an electronic format. All records are subject to audit or monitoring during the entire retention period.

(b) Grantees must retain records for equipment, non-expendable personal property, and real property for a period of three years from the date of the item's disposition, replacement, or transfer.

(c) If any litigation, claim, or audit is started before the expiration of the three-year records retention period, the grantee must retain the records under review until the completion of the action and resolution of all issues which arise from it or until the end of the regular three-year period, whichever is later.

#### §3.2507. Financial Status Reports.

(a) Each grantee must submit financial status reports to PSO in the PSO-prescribed format no later than the designated [CJD. CJD will provide the appropriate forms and instructions for the reports along with] deadlines for their submission.

(b) A financial status report reflecting cumulative expenditures from the start of the grant may be submitted as often as monthly but must be submitted at least quarterly. Grantees may only request an advance payment during the first month of the grant period to cover the first month's expenses.

(c) Grantees must ensure [that CJD receives] their final financial status report is submitted no later than the liquidation date or funds shall [will] lapse and revert to the grantor agency. If grant funds are on hold for any reason, these funds shall [will] lapse on the liquidation date and the grantee cannot recover them. The OOG shall [CJD will] not make payments to grantees that submit their final financial status report after the liquidation date.

#### §3.2509. Equipment Inventory Reports.

Grantees must [CJD requires each grantee to] maintain on file a current inventory report of all equipment purchased with grant funds during the grant period. This report must reconcile with the approved grant budget and the final financial status report, and must contain all required PSO data elements.

#### §3.2513. Grant Adjustments.

(a) The project director, financial officer, or authorized official may submit requests for grant adjustments.

(b) Adjustments consisting of increases or decreases in the amount of a grant or the reallocation of grant funds among or within approved budget categories are allowable only with prior PSO [CJD] approval.

(c) Programmatic changes, such as requests to revise the scope, target, or focus of the project, or alter project activities require prior approval from PSO [CJD]. Requests to extend the grant period must be submitted to and received by PSO [CJD], no later than the last day of the grant period.

#### §3.2515. Bonding.

Each nonprofit corporation receiving funds from the OOG [CJD] must obtain and have on file a blanket fidelity bond that indemnifies the OOG [CJD] against the loss and theft of the entire amount of grant funds. The cost of the bond is an eligible expense of the grant.

#### §3.2517. Remedies for Noncompliance.

If a grantee fails to comply with any term or condition of a grant or any applicable statutes, rules, regulations, or guidelines, the OOG [CJD] may:

(1) withhold all grant payments to a specific project or withhold all grant payments to all grant projects awarded to the grantee pending correction of the deficiency;

(2) disallow all or part of the cost of the activity or action that is not in compliance;

(3) withhold further grants from the program or grantee;

(4) terminate the grant in whole or in part; or

- (5) exercise other legal remedies.

§3.2519. *Grant Reduction or Termination.*

(a) If a grantee seeks ~~[wishes]~~ to terminate any approved grant, it must notify ~~the OOG [CJD]~~ immediately.

(b) The OOG [CJD] may reduce or terminate any grant when circumstances require reduction or termination, including, but not limited to when:

(1) a grantee fails to comply with any term or condition of the grant or the grantee has failed to comply with any applicable statute, rule, regulation, or guideline;

(2) the grantee and ~~the OOG [CJD]~~ agree to do so;

(3) state or federal funds are no longer available to ~~the OOG [CJD]~~;

(4) conditions exist that make it unlikely that grant objectives will be accomplished; or

(5) the grantee has acted in bad faith.

(c) In the event that a grant is reduced or terminated by ~~the OOG, the OOG shall [CJD, CJD will]~~ notify the grantee in writing.

§3.2523. *Violations of Laws.*

(a) A grantee must immediately notify ~~the OOG [CJD]~~ in writing of any legal violations.

(b) A grantee must immediately notify ~~the OOG [CJD]~~ in writing if a project or project personnel become involved in any civil or criminal litigation and the grantee must immediately forward a copy of any demand notices, subpoenas, lawsuits, or indictments to ~~the OOG [CJD]~~.

(c) If a federal or state court or administrative agency renders a judgment or order finding discrimination by a grantee based on race, color, national origin, sex, age, or ~~disability [handicap]~~, the grantee must immediately forward a copy of the judgment or order to ~~the OOG [CJD]~~.

(d) If any records are seized from a grantee by a law enforcement agency, or a state or federal agency, the grantee must immediately notify ~~the OOG [CJD]~~ in writing of the seizure and must retain copies of the seized records.

§3.2525. *Evaluating Project Effectiveness.*

(a) Grantees must regularly evaluate their projects. ~~PSO shall monitor grantees [CJD will monitor the grantee]~~ through progress reports, on-site visits, and desk reviews. Grantees must maintain information related to project evaluations in the project's files, and that information must be available for review.

(b) Grantees are responsible for managing the day-to-day operations of grant and sub-grant supported activities, including those of their contractors and subcontractors. Grantees must develop and maintain a standardized monitoring program incorporating best practices.

§3.2527. *Grantee Reports.*

(a) Each grantee must submit reports regarding grant information, performance, and progress. To remain eligible for funding, the grantee must be able to show the scope of services provided and the impact and quality of those services.

(b) ~~The OOG [CJD]~~ may place projects on financial hold for failure to submit complete and accurate progress reports. A grantee's history of delinquent or inaccurate reports may affect future funding decisions.

§3.2529. *Grant Management.*

(a) ~~PSO [CJD]~~ has oversight responsibility for the grants it awards ~~and [CJD]~~ may review the grantee's management and administration of grant funds and records at any time. Grantees must respond to all ~~PSO [CJD]~~ inquiries or requests and must make all requested records available ~~[to CJD]~~.

(b) The grantee is the entity legally and financially responsible for the grant. A grantee may not delegate its legal or financial responsibility.

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## SUBCHAPTER F. PROGRAM MONITORING AND AUDITS

### 1 TAC §3.2601, §3.2603

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §772.006(a)(10), which provides that the OOG shall adopt rules necessary to implement the requirements of Texas Government Code, §772.006.

#### CROSS REFERENCE TO STATUTE

Chapter 3, Subchapter F. No other statutes, articles, or codes are affected by the proposed amendments.

#### §3.2601. *Monitoring.*

(a) ~~PSO [CJD]~~ and ~~OCM shall [COD will]~~ monitor the activities of grantees as necessary to ensure that grant funds are used for authorized purposes and that grantees achieve grant purposes.

(b) The monitoring program may consist of formal audits, monitoring reviews, and technical assistance. ~~PSO or OCM [CJD or COD]~~ may implement monitoring through on-site review at the grantee or sub-grantee location or through a desk review. ~~PSO or OCM [CJD or COD]~~ may request that ~~grantees [to]~~ submit information to ~~PSO or OCM [CJD or COD]~~ to support any monitoring review.

(c) Grantees must make ~~[available to CJD or COD]~~ all records relevant to a monitoring review ~~available~~. Failure to provide adequate documentation may result in disallowed costs or other remedies for noncompliance.

(d) After a monitoring review, the grantee shall ~~[will]~~ be notified in writing ~~through a preliminary report~~ of any ~~identified noncompliance [identified by CJD or COD in the form of a preliminary report]~~. ~~The preliminary report shall enumerate deficiencies and provide recommendations to cure the deficiencies.~~

(e) The grantee shall respond to the preliminary report and the deficiencies or recommendations, and submit to ~~PSO or OCM~~ a corrective action plan ~~or, if the grantee believes correction action is not~~

required in response to a deficiency or recommendation, an explanation under subsection (g) of this section [to CJD or COD] within a time specified by PSO or OCM [CJD or COD].

(f) The corrective action plan shall include:

- (1) the titles of the persons responsible for implementing the corrective action plan;
- (2) the corrective action to be taken; and
- (3) the anticipated completion date.

(g) If the grantee believes corrective action is not required in response to [for] a deficiency or recommendation, the response shall include an explanation and specific reasons. PSO or OCM shall [CJD or COD will] determine whether the response is adequate to resolve the deficiency or recommendation.

(h) The grantee's response and the approved corrective action plan shall become part of the final report.

(i) The grantee shall resolve all identified findings within the time specified [by CJD or COD].

(j) PSO shall issue a final report:

(1) when PSO or OCM observes no deficiencies during the monitoring review; or

(2) after receiving the response by a grantee to the preliminary report.

§3.2603. Audits Not Performed by PSO or OCM [CJD or COD].

(a) Grantees must have audits performed in accordance with the requirements set forth in 2 CFR Part 200, Subpart F[-] concerning Audit Requirements, and the State Single Audit requirements issued under UGMS.

(b) Grantees that meet the Single Audit requirements as set forth in either 2 CFR Part 200, Subpart F concerning Audit Requirements, or the State Single Audit requirements issued under UGMS, must submit to OCM a Single Audit reporting package [COD copies of the results of any single audit conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements or in accordance with the State Single Audit requirements issued under UGMS. Grantees must ensure that single audit results, including the grantee's response and corrective action plan, if applicable, are submitted to COD] within 30 calendar days of receiving the Single Audit report from the independent auditor [after the grantee receives the audit results] or nine months after the end of the audit period, whichever is earlier.

(c) Grantees who are not required to have a Single Audit for any fiscal year in which the OOG award was made or expended, must submit a Certification of Single Audit Reporting Requirement Exemption form to OCM within 60 calendar days of the end of the grantee's fiscal year.

(d) [(e)] All other audits performed by auditors independent of PSO or OCM [CJD or COD] must be maintained at the grantee's administrative offices and made available upon request [by CJD or COD]. Grantees must notify PSO [CJD] of any audit results that may adversely impact grant funds.

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**SUBCHAPTER G. PUBLIC SAFETY OFFICE  
[CRIMINAL JUSTICE DIVISION] BOARDS  
DIVISION 1. TEXAS CRIME STOPPERS  
COUNCIL**

**1 TAC §3.8105, §3.8115**

**STATUTORY AUTHORITY**

The amendments are proposed under Texas Government Code, §772.006(a)(10), which provides that the OOG shall adopt rules necessary to implement the requirements of Texas Government Code, §772.006.

**CROSS REFERENCE TO STATUTE**

Chapter 3, Subchapter G. No other statutes, articles, or codes are affected by the proposed amendments.

*§3.8105. General Powers.*

(a) Pursuant to Chapter 414 of the Texas Government Code, the Council is authorized to:

(1) certify a crime stoppers organization to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42A [42.12] of the Texas Code of Criminal Procedure;

(2) decertify an organization, thereby rendering the organization ineligible to receive such repayments or payments; and

(3) adopt rules to carry out its function; however, the Council may not adopt rules that conflict with rules relating to grants adopted by PSO or CJD.

(b) In addition, the Council acts in an advisory capacity to the executive director of PSO [CJD], who shall [will] relate their recommendations and those of PSO [CJD] to the governor as needed.

*§3.8115. Meetings.*

(a) At all meetings, the latest version of *Robert's Rules of Order* shall govern proceedings.

(b) Meetings shall [will] be held at least annually and at other times deemed necessary by the chairman or the executive director of PSO [CJD].

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

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## DIVISION 3. SPECIALTY COURTS ADVISORY COUNCIL

### 1 TAC §3.8305

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §772.006(a)(10), which provides that the OOG shall adopt rules necessary to implement the requirements of Texas Government Code, §772.006.

#### CROSS REFERENCE TO STATUTE

Chapter 3, Subchapter G. No other statutes, articles, or codes are affected by the proposed amendments.

§3.8305. *General Powers.*

Pursuant to §772.0061 of the Texas Government Code, the Council is authorized to:

(1) evaluate applications for grant funding for specialty courts in this state and to make funding recommendations to PSO or CJD; and

(2) make recommendations to PSO or CJD regarding best practices for specialty courts established under Chapters 122, 123, 124, or 125 of the Texas Government Code, or former law.

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

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## CHAPTER 3. CRIMINAL JUSTICE DIVISION SUBCHAPTER G. CRIMINAL JUSTICE DIVISION BOARDS

### DIVISION 2. GOVERNOR'S JUVENILE JUSTICE ADVISORY BOARD

#### 1 TAC §§3.8200, 3.8205, 3.8210, 3.8215, 8.8220

The Office of the Governor ("OOG") proposes the repeal of 1 TAC §§3.8200, concerning Establishment, 3.8205, concerning General Powers, 3.810, concerning Composition, 3.8215, concerning Meetings, 3.8220, concerning Compensation. The OOG identified the necessity of the proposed repeals during the Governor's Office's periodic review of 1 TAC Chapter 3, conducted pursuant to Texas Government Code §2001.039. The proposed repeals will dissolve the Governor's Juvenile Justice Advisory Board.

#### EXPLANATION OF PROPOSED REPEALS

The purpose for the proposed repeal of 1 TAC §§3.8200, 3.8205, 3.8210, 3.8215, 3.8220 is to remove the Governor's Juvenile Justice Advisory Board. The Board is a federal requirement for the administration of grant funds under the Juvenile Justice and Delinquency Prevention Act, but the OOG no longer administers these funds, so the Board is no longer necessary.

#### FISCAL NOTE

Aimee Snoddy, Executive Director, Public Safety Office, has determined that during each year of the first five years in which the proposed repeals are in effect, there will be no expected fiscal impact on state and local governments as a result of enforcing or administering the proposed repeals.

Ms. Snoddy does not anticipate any measureable effect on local employment or the local economy as a result of the proposed repeals.

#### PUBLIC BENEFIT AND COSTS

Ms. Snoddy has also determined that during each year of the first five years in which the proposed repeals are in effect, the public benefit anticipated as a result of the repeals is the ability of local juvenile justice programs to obtain direct federal funding.

Ms. Snoddy has determined there are no measurable anticipated economic costs to persons required to comply with the proposed repeals.

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Snoddy has determined that during each year of the first five years in which the proposed repeals are in effect, the repeals do not 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 OOG; will not require an increase or decrease in fees paid to the OOG; do not create a new regulation; and will not positively or adversely affect the Texas economy. The proposal will repeal existing regulations and will decrease the number of individuals subject to the applicability of the rules.

#### TAKINGS IMPACT ASSESSMENT

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

#### SUBMISSION OF COMMENTS

Written comments regarding the proposed rule repeals may be submitted to Stephanie Greger, Assistant General Counsel, Office of the Governor, P.O. Box 12428, Austin, Texas 78711 or by email to [stephanie.greger@gov.texas.gov](mailto:stephanie.greger@gov.texas.gov) with the subject line "Criminal Justice Division Rule Review." The deadline for receipt of comments is 5:00 p.m., Central Time, on April 4, 2021.

## STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §772.006(a)(10), which provides that the OOG shall adopt rules necessary to implement the requirements of Texas Government Code, §772.006.

## CROSS REFERENCE TO STATUTE

Chapter 3, Subchapter G. No other statutes, articles, or codes are affected by the proposed repeals.

§3.8200. *Establishment.*

§3.8205. *General Powers.*

§3.8210. *Composition.*

§3.8215. *Meetings.*

§3.8220. *Compensation.*

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

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Aimee Snoddy

Executive Director, Public Safety Office

Office of the Governor

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## CHAPTER 5. GENERAL ADMINISTRATION SUBCHAPTER B. ADMINISTRATIVE POLICIES

### 1 TAC §5.101

The Office of the Governor ("OOG"), proposes amendments to 1 TAC §5.101, concerning the Identification and Escalation of Procurement Contracts that Require Enhanced Contract or Performance Monitoring. The OOG identified the necessity of the proposed amendments during the OOG's periodic review of 1 TAC Chapter 5, Subchapter B, conducted pursuant to Texas Government Code §2001.039. The proposed amendments will provide additional clarity to the OOG's processes to identify and escalate procurement contracts that required enhanced monitoring.

### EXPLANATION OF PROPOSED AMENDMENTS

The purpose of the rule at issue is to implement state contracting requirements established by §2261.253(c), Texas Government Code. The law requires a state agency, by rule, to establish a procedure to identify contracts that require enhanced contract or performance monitoring, and submit information on these contracts to the agency's governing official. Additionally, the agency's contract management office or procurement director is required to immediately notify the agency's governing official of any serious issue or risk that is identified with respect to a contract monitored under §2261.253(c).

The proposed amendments to §5.101(a) remove the current text of subsection (a) because it is redundant of the text of subsection (b).

The proposed amendments to §5.101(b) provide additional clarity to the provision and more specifically denote the types of contracts for which a risk assessment is required and the types of contracts for which a risk assessment is discretionary.

The proposed amendments to §5.101(c) replace "agency" with "OOG."

The proposed amendments to §5.101(d) clarify the OOG division tasked with providing information to the OOG's Chief of Staff about contracts for which it is determined the OOG must exercise enhanced monitoring.

The remaining proposed amendments redesignate subsections in conformity with the removal of subsection (a).

### FISCAL NOTE

Suzanne Johnson, Director of Administration, Office of the Governor, has determined that during each year of the first five years in which the proposed amendments are in effect, there will be no expected fiscal impact on state and local governments as a result of enforcing or administering the proposed amendments.

Ms. Johnson does not anticipate any measureable effect on local employment or the local economy as a result of the proposed amendments.

### PUBLIC BENEFIT AND COSTS

Ms. Johnson has also determined that during each year of the first five years in which the proposed amendments are in effect, the public will benefit from greater clarity of the instances and circumstances in which contract risk assessment will be undertaken by the OOG.

Ms. Johnson has determined there are no measurable anticipated economic costs to persons required to comply with the proposed amendments.

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

### GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Johnson has determined that during each year of the first five years in which the proposed amendments are in effect, the amendments:

- 1) will not create or eliminate a government program;
- 2) will not require the creation of new employee positions or the elimination of existing employee positions;
- 3) will not require an increase or decrease in future legislative appropriations to the OOG;
- 4) will not require an increase or decrease in fees paid to the OOG;
- 5) do not create a new regulation;
- 6) do not expand, limit, or repeal an existing regulation;
- 7) will not increase or decrease the number of individuals subject to the applicability of the rule; and
- 8) will not positively or adversely affect the Texas economy.

## TAKINGS IMPACT ASSESSMENT

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

## SUBMISSION OF COMMENTS

Written comments regarding the proposed rule amendments may be submitted to Joseph Behnke, Office of the Governor, P.O. Box 12428, Austin, Texas 78711 or by email to joseph.behnke@gov.texas.gov with the subject line "Procurement Contract Enhanced Monitoring Rule Review." The deadline for receipt of comments is 5:00 p.m., Central Time, on April 4, 2021.

## STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §2261.253(c), which requires the OOG to establish by rule a procedure to identify each procurement contract that requires enhanced contract or performance monitoring.

No other statutes, articles, or codes are affected by the proposed amendments.

### *§5.101 Identification and Escalation of Procurement Contracts that Require Enhanced Contract or Performance Monitoring*

(a) ~~[The OOG will complete a risk assessment to identify procurement contracts for goods or services from a private vendor that require enhanced contract or performance monitoring.]~~

~~[(b)] The Office of the Governor (OOG) shall [will] complete a risk assessment for contracts with a private vendor for goods or services with a value greater than \$100,000 to evaluate whether the OOG must exercise enhanced contract or performance monitoring on such contracts [may be required for contracts with a value greater than \$100,000]. For contracts with a private vendor for goods or services with a value of \$100,000 or less [of a lesser value], the OOG may complete a risk assessment to evaluate whether enhanced contract or performance monitoring is necessary for such contracts [indicated].~~

~~(b) [(e)] The risk assessment may consider the following factors:~~

- ~~(1) total cost of the contract, including contract renewals;~~
- ~~(2) risk of loss to the OOG [agency] under the contract;~~
- ~~(3) risk of fraud, waste or abuse;~~
- ~~(4) scope of the goods or services provided;~~
- ~~(5) availability of OOG [agency] resources;~~
- ~~(6) complexity of the contract;~~
- ~~(7) business process impact of failure or delay;~~
- ~~(8) vendor past performance; and~~
- ~~(9) whether the vendor is a foreign or domestic person or entity.~~

~~(c) [(d)] The director of the OOG's Financial Services Division shall provide information on contracts for which it is determined the OOG must exercise enhanced contract or performance monitoring [Information on these contracts will be reported] to the OOG's Chief of Staff at least quarterly. The Chief of Staff shall [will] be notified immediately of any serious issue or risk that is identified with respect~~

to [such a] contracts identified requiring enhanced contract or performance monitoring [~~contract~~].

(d) ~~[(e)] This section does not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.~~

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

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Suzanne Johnson

Director of Administration

Office of the Governor

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## TITLE 10. COMMUNITY DEVELOPMENT

### PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM OFFICE

#### CHAPTER 188. FUEL ETHANOL AND BIODIESEL PRODUCTION INCENTIVE PROGRAM

##### 10 TAC §§188.1 -188.10

The Office of the Governor, Economic Development and Tourism Office ("OOG") proposes the repeal of 10 TAC §§188.1 - 188.10, concerning the Fuel Ethanol and Biodiesel Production Incentive Program. The OOG identified the necessity of the proposed repeals during the OOG's periodic review of 10 TAC, chapter 188, conducted pursuant to Texas Government Code §2001.039. The proposed repeals remove the entirety of 10 TAC, chapter 188.

#### EXPLANATION OF PROPOSED REPEALS

The proposed repeals pertain to the Fuel Ethanol and Biodiesel Production Incentive Program (Program), which relates to the registration of fuel ethanol and biodiesel producers and grants of state funds for the production of fuel ethanol and biodiesel.

The Program, established by Texas Agriculture Code, chapter 16, was created to encourage the development and production of fuel ethanol and biodiesel and set registration standards. 10 TAC, chapter 188 set out a Memorandum of Understanding between the OOG and the Texas Department of Agriculture (Department) that delineated the roles of the parties related to the Program and transferred the authority to administer the Program to the Department, as authorized by Texas Agriculture Code, §16.005. The Memorandum of Understanding between the OOG and the Department terminated on August 31, 2007 and has not been renewed due to lack of funding. The Program was funded for 18 months in the 2006-2007 biennium, but has not been funded since. Therefore, the OOG has determined the proposed repeals are necessary the reasons for initially adopting the rule do not continue to exist.

The repeal of §188.1 - 188.10 removes the entirety of 10 TAC, chapter 188, and the expired Memorandum of Understanding between the OOG and the Department.

Adriana Cruz, Executive Director, Economic Development and Tourism Office, Office of the Governor, has determined that during each year of the first five years in which the proposed repeals are in effect, there will be no expected fiscal impact on state and local governments as a result of the proposed repeals.

Ms. Cruz does not anticipate any measureable effect on local employment or the local economy as a result of the proposed repeals.

#### PUBLIC BENEFIT AND COSTS

Ms. Cruz has determined there are no measurable anticipated economic costs to persons required to comply with the proposed repeals. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Since the OOG has determined that the proposed repeals will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Cruz has determined that during each year of the first five years in which the proposed repeals are in effect, the repeals 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 OOG; will not require an increase or decrease in fees paid to the OOG; do not create a new regulation; will expand, limit, or repeal existing regulations; will not increase or decrease the number of individuals subject to the applicability of the rules; and will not positively or adversely affect the Texas economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### SUBMISSION OF COMMENTS

Comments may be submitted for 30 days following the date of publication of this notice by mail to Adriana Cruz, Office of the Governor, Economic Development and Tourism Office, P.O. Box 12428, Austin, Texas 78711 or by email to [adriana.cruz@gov.texas.gov](mailto:adriana.cruz@gov.texas.gov) with the subject line "Fuel Ethanol and Biodiesel Production Incentive Program Rule Review." The deadline for receipt of comments is 5:00 p.m., Central Time, on April 4, 2021.

#### STATUTORY AUTHORITY

The repeals are proposed under Texas Agriculture Code, §16.006, which provides that the OOG shall adopt rules necessary to provide for the distribution of grant funds under the Program.

#### CROSS REFERENCE TO STATUTE

Texas Agricultural Code, chapter 16. No other statutes, articles, or codes are affected by the proposed repeals.

§188.1. *Authority and Parties.*

§188.2. *Scope of Work.*

§188.3. *Period of Performance.*

§188.4. *Audit.*

§188.5. *Governing Law.*

§188.6. *Notice.*

§188.7. *Funding and Performance.*

§188.8. *Assignment.*

§188.9. *Severability.*

§188.10. *Certifications.*

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 22, 2021.

TRD-202100711

Adriana Cruz

Executive Director, Economic Development and Tourism

Office of the Governor, Economic Development and Tourism Office

Earliest possible date of adoption: April 4, 2021

For further information, please call: (512) 463-2000



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 30. ADMINISTRATION

##### SUBCHAPTER A. STATE BOARD OF EDUCATION: GENERAL PROVISIONS

###### 19 TAC §30.1

The State Board of Education (SBOE) proposes an amendment to §30.1, concerning petitioning for the adoption of rule changes. The proposed amendment would update the SBOE petition procedures to allow for electronic submission of a petition authorized under Texas Government Code (TGC), §2001.021.

**BACKGROUND INFORMATION AND JUSTIFICATION:** TGC, §2001.021, requires that procedures to petition for the adoption of rule changes be adopted by rule. To comply with statute, the SBOE adopted §30.1 effective December 5, 2004. Prior to the adoption of §30.1, procedures to petition for the adoption of changes to SBOE rules were included as part of the SBOE's operating rules. Effective April 26, 2009, an amendment adopted in rule the petition form to be used to submit a petition. Effective May 23, 2017, an amendment updated the petition form adopted in rule to require the petitioner to indicate that the petitioner meets one of the four definitions of an interested person specified in statute and added language to specify the reasons the SBOE may deny a petition for rulemaking.

The proposed amendment to §30.1 would update the SBOE's petition procedures, including the petition form included as Figure: 19 TAC §30.1(a), to improve efficiency by ensuring that an

interested person can submit the petition for rulemaking electronically. In addition, the proposed amendment to Figure: 19 TAC §30.1(a) would specify one Texas Education Agency (TEA) division as the collection point for all petitions submitted to the SBOE. This would ensure timely acknowledgement and reviewing of a petition by TEA staff for consideration by the SBOE at a future meeting.

The proposed amendment to §30.1(b) would add "calendar" to the phrase 60 days to clarify the timeline for responding to a petition.

The proposed amendment to §30.1(a), (b)(1) and (2), and (c) would replace "commissioner" with "TEA staff" to reflect that the initial review of the merits of the petition is conducted by TEA staff for recommendation to the SBOE.

In addition, the proposed amendment to §30.1(d)(4)(A) would clarify that the SBOE may deny a petition if the petition is filed within one year of the SBOE denying a petition on a similar rule or the same subject matter. This change would address similar or duplicate petitions submitted within one year. The time period of one year is already established in rule and not proposed to be changed.

The proposed amendment would also include technical edits throughout §30.1 to improve readability.

The SBOE approved the proposed amendment for first reading and filing authorization at its January 29, 2021 meeting.

**FISCAL IMPACT:** Megan Aghazadian, deputy commissioner for operations, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under TGC, §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 TGC, §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 TGC, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §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 for a petition for rulemaking to be submitted via electronic means.

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 ap-

plicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Aghazadian 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 providing another means by which an interested person can file a petition for rulemaking, creating a more efficient process, and reflecting current procedures. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins March 5, 2021, and ends at 5:00 p.m. on April 9, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBOE\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in April 2021 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 5, 2021.

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Government Code, §2001.021, which authorizes a state agency to prescribe by rule the form for a petition and the procedure for the submission, consideration, and disposition.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Government Code, §2001.021.

*§30.1. Petition for Adoption of Rule Changes.*

(a) Any interested person as defined in Texas Government Code (TGC), §2001.021(d), may petition for the adoption, amendment, or repeal of a rule of the State Board of Education (SBOE) by filing a petition on the [a] form provided in this subsection. The petition shall be signed and submitted to the Texas Education Agency (TEA) [commissioner of education]. The TEA staff [In consultation with the persons in the Texas Education Agency who are] responsible for the area with which the rule is concerned [, the commissioner] shall evaluate the merits of the petition [proposal] to determine whether to recommend that rulemaking proceedings be initiated or that the petition be denied.

Figure: 19 TAC §30.1(a)

[Figure: 19 TAC §30.1(a)]

(b) In accordance with TGC [the Texas Government Code], §2001.021, the TEA staff [agency] must respond to the petitioner within 60 calendar days of receipt of the petition.

(1) Where possible, the TEA staff [commissioner's] recommendation concerning the petition shall be placed on the next SBOE agenda, and the SBOE shall act on the petition within 60 calendar days [the 60-day time limit].

(2) Where the time required to review the petition or the scheduling of SBOE meetings will not permit the SBOE to act on the petition within the required 60 calendar days, the TEA staff

[~~commissioner or a designee~~] shall respond to the petitioner within the required 60 calendar days, notifying the petitioner of the date of the SBOE meeting at which the TEA staff recommendation will be presented to the SBOE for action.

(c) The SBOE will review the petition and the TEA staff recommendation [~~of the commissioner~~] and will either deny the petition, giving reasons for the denial, or direct the TEA staff [~~commissioner~~] to begin the rulemaking process [or deny the petition, giving reasons for the denial]. The TEA staff [~~commissioner or designee~~] will notify the petitioner of the SBOE's action related to the petition.

(d) The SBOE may deny a petition on the following grounds:

(1) the SBOE does not have jurisdiction or authority to propose or adopt the petitioned rule;

(2) the petitioned rule conflicts with a statute, court decision, another rule proposed or adopted by the SBOE, or other law;

(3) the SBOE determines that a different proceeding, procedure, or act more appropriately addresses the subject matter of the petition than initiating a rulemaking proceeding;

(4) the petitioner files [is inappropriately using the opportunity to file a rulemaking petition under this section, as evidenced by filing] a petition:

(A) within one year of the SBOE denying a [having the] petition on a similar rule or the same subject matter [denied]; or

(B) to amend a rule proposed or adopted by the SBOE that has not yet become effective; or

(5) any other reason the SBOE determines is grounds for denial.

(e) If the SBOE initiates rulemaking procedures in response to a petition, the rule text which the SBOE proposes may differ from the rule text proposed by the petitioner.

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

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TRD-202100699

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## CHAPTER 61. SCHOOL DISTRICTS

### SUBCHAPTER B. SPECIAL PURPOSE SCHOOL DISTRICTS

#### 19 TAC §61.111

The State Board of Education (SBOE) proposes new §61.111, concerning applicability of state law to Boys Ranch Independent School District. The proposed new rule would identify provisions of the Texas Education Code (TEC) that are not applicable to Boys Ranch Independent School District.

BACKGROUND INFORMATION AND JUSTIFICATION: TEC, §11.352, permits the SBOE to adopt rules for the governance of a special purpose district.

Boys Ranch Independent School District is a special purpose school district operated by Cal Farley's Boys Ranch. It is a public school of this state fulfilling the mission of the Texas public education system to ensure that Texas students receive a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation.

Boys Ranch Independent School District has requested that the SBOE waive specific provisions of the TEC related to district governance and operation.

Proposed new §61.111 would establish the section's applicability only to Boys Ranch Independent School District and identify the provisions of the TEC that would not apply to the special purpose school district.

The SBOE approved the proposed new section for first reading and filing authorization at its January 29, 2021 meeting.

FISCAL IMPACT: Jeff Cottrill, deputy commissioner for governance and accountability, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation. The new rule would identify provisions of the TEC that are not applicable to the special purpose school district Boys Ranch Independent School District.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, 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: Dr. Cottrill 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 clarifying which provisions of the TEC are not applicable to the special purpose school district Boys Ranch Independent School District. 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 and reporting impact.

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins March 5, 2021, and ends at 5:00 p.m. on April 9, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBOE\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in April 2021 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 5, 2021.

**STATUTORY AUTHORITY.** The new section is proposed under Texas Education Code (TEC), §11.351, which permits the State Board of Education (SBOE) to establish a special purpose school district for the education of students in special situations whose educational needs are not adequately met by regular school districts. The board is also permitted to impose duties or limitations on the school district as necessary for the special purpose of the district; and TEC, §11.352, which permits the SBOE to adopt rules for the governance of a special purpose district.

**CROSS REFERENCE TO STATUTE.** The new section implements Texas Education Code, §11.351 and §11.352.

§61.111. Applicability of State Law to Boys Ranch Independent School District.

(a) This section applies only to Boys Ranch Independent School District.

(b) Boys Ranch Independent School District, a special purpose school district operated by Cal Farley's Boys Ranch, is a public school of this state fulfilling the mission of the Texas public education system to ensure that Texas students receive a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation.

(c) Except as provided by subsection (d) of this section, the laws applicable to Texas public schools apply to Boys Ranch Independent School District in accordance with Texas Education Code (TEC), §11.352(c).

(d) The following sections of the TEC do not apply to Boys Ranch Independent School District:

(1) TEC, §25.0811, related to the first day of instruction;  
and

(2) TEC, §25.0812, related to the last day of school.

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 22, 2021.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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

## CHAPTER 74. CURRICULUM REQUIREMENTS

### SUBCHAPTER A. REQUIRED CURRICULUM

#### 19 TAC §74.5

The State Board of Education (SBOE) proposes an amendment to §74.5, concerning academic achievement record (transcript). The proposed amendment would require documentation of the new graduation requirement that a student complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA).

**BACKGROUND INFORMATION AND JUSTIFICATION:** The 86th Texas Legislature, 2019, passed House Bill (HB) 3, amending Texas Education Code (TEC), §28.025(c), and adding new TEC, §28.0256, to require a student to complete a financial aid application, FAFSA or TAFSA, in order to graduate. In accordance with TEC, §28.0256(b), a student is not required to comply with the requirement to complete and submit a financial aid application if the student's parent or guardian submits a signed opt-out form authorizing the student to decline. The student may submit the opt-out form on the student's own behalf if the student is 18 years of age or older or is an emancipated youth under Texas Family Code, Chapter 31. A school counselor may also authorize the student to decline to complete and submit a financial aid application for good cause, as determined by the school counselor. The opt-out form must be approved by the Texas Education Agency (TEA). Each school district must report to the agency the number of students who meet the financial aid application requirement by either completing and submitting a financial aid application or opting out.

The proposed amendment would update the rule for the academic achievement record to document the completion of the new financial aid application graduation requirement.

The SBOE approved the proposed amendment for first reading and filing authorization at its January 29, 2021 meeting.

**FISCAL IMPACT:** Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government beyond what is required by the authorizing statute. HB 3, 86th Texas Legislature, 2019, required school districts and charter schools to monitor and report the completion of the financial aid application requirement, which will have a cost to the state. However, the 86th Texas Legislature, 2019, appropriated \$1.5 million to TEA for the creation of a database to track TASFA completion electronically.

In addition, there may be costs to school districts and charter schools associated with required updates to local student information systems in order to implement the requirements of statute. These may include the need for professional develop-

ment and amendments to district-developed databases. Since the design and format of and data collection for the academic achievement record (high school transcript) are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

**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 requiring school districts and charter schools to report the completion of the financial aid application requirement on the academic achievement record.

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:** Ms. Martinez 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 improving documentation of requirements on the academic achievement record and the ability to more effectively transmit that information between school districts. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have data and reporting implications. The proposed amendment would require school districts and charters schools to report the completion of the financial aid application requirement on the academic achievement record.

**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 March 5, 2021, and ends at 5:00 p.m. on April 9, 2021. A form for submitting public comments is available on

the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBOE\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in April 2021 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 5, 2021.

#### STATUTORY AUTHORITY.

The amendment is proposed under Texas Education Code (TEC), §7.102(c)(13), which requires the State Board of Education (SBOE) to adopt transcript forms and standards for differentiating high school performance for purposes of reporting academic achievement under TEC, §28.025; TEC, §28.025(e), which requires each school district to report the academic achievement record of students who have completed the foundation high school program on transcript forms adopted by the SBOE; and TEC, §28.0256(a), as added by House Bill 3, 86th Texas Legislature, 2019, which requires each student to complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA) before graduating from high school.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§7.102(c)(13); 28.025(e); and 28.0256(a), as added by House Bill 3, 86th Texas Legislature, 2019.

#### §74.5. *Academic Achievement Record (Transcript).*

(a) The commissioner of education shall develop and distribute to each school district and institution of higher education the state guidelines for a common academic achievement record and coding system for courses and instructions for recording information on the academic achievement record. Each school district must use the coding system provided by the commissioner.

(b) Following guidelines developed by the commissioner, each school district must use an academic achievement record (transcript) form that includes the following:

- (1) student demographics;
- (2) school data;
- (3) student data; and
- (4) the record of courses and credits earned.

(c) The academic achievement record shall serve as the academic record for each student and must be maintained permanently by the district. Each district must ensure that copies of the record are made available for a student transferring from one district to another. To ensure appropriate placement of a transfer student, a district must respond promptly to each request for student records from a receiving school district.

(d) Any credit earned by a student must be recorded on the academic achievement record, regardless of when the credit was earned.

(e) A student who completes high school graduation requirements shall have attached to the academic achievement record a seal approved by the State Board of Education [SBOE].



(f) A student who completes the requirements for an endorsement shall have the endorsement clearly indicated on the academic achievement record.

(g) A student who earns a performance acknowledgment shall have the performance acknowledgment clearly indicated on the academic achievement record.

(h) A student who earns the distinguished level of achievement shall have the distinguished level of achievement clearly indicated on the academic achievement record.

(i) A student who demonstrates proficiency in speech as specified in §74.11(a)(3) of this title (relating to High School Graduation Requirements) shall have completion of the speech requirement clearly indicated on the academic achievement record.

(j) A student who completes the required instruction in cardiopulmonary resuscitation (CPR) as specified in §74.38 of this title (relating to Requirements for Instruction in Cardiopulmonary Resuscitation (CPR)) in Grade 9, 10, 11, or 12 shall have completion of the CPR instruction clearly indicated on the academic achievement record.

(k) A student who completes the required instruction on proper interaction with peace officers shall have completion of the instruction clearly indicated on the academic achievement record.

(l) A student who completes and submits a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA) or submits the Texas Education Agency-approved opt-out form shall have the completion of the financial aid application requirement clearly indicated on the academic achievement record.

(m) [(H)] A student who satisfies a languages other than English graduation credit requirement by successfully completing a dual language immersion program at an elementary school in accordance with §74.12(b)(5)(F) of this title (relating to Foundation High School Program) shall have the credit clearly indicated on the academic achievement record.

(n) [(m)] A student who completes all graduation requirements except for required end-of-course assessment instruments may be issued a certificate of coursework completion. The academic achievement record will include a notation of the date such a certificate was issued to the student.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

### SUBCHAPTER C. ADOPTIONS BY REFERENCE

#### 19 TAC §109.41

The State Board of Education (SBOE) proposes an amendment to §109.41, concerning budgeting, accounting, and auditing. The proposed amendment would adopt by reference the updated *Financial Accountability System Resource Guide* (FASRG).

**BACKGROUND INFORMATION AND JUSTIFICATION:** The FASRG describes the rules of financial accounting for school districts, charter schools, and education service centers and is adopted by reference under §109.41. Revisions to the FASRG would align the content with current governmental accounting and auditing standards, remove obsolete requirements, and remove descriptions and discussions of best practices and other non-mandatory elements.

Requirements for financial accounting and reporting are derived from generally accepted accounting principles (GAAP). School districts and charter schools are required to adhere to GAAP. Legal and contractual considerations typical of the government environment are reflected in the fund structure basis of accounting.

An important function of governmental accounting systems is to enable administrators to assure and report on compliance with finance-related legal provisions. This assurance and reporting means that the accounting system and its terminology, fund structure, and procedures must be adapted to satisfy finance-related legal requirements. However, the basic financial statements of school districts and charter schools should be prepared in conformity with GAAP.

School district and charter school accounting systems shall use the accounting code structure presented in the account code section of the FASRG (Module 1). Funds shall be classified and identified on required financial statements by the same code number and terminology provided in the account code section of the FASRG (Module 1).

The following changes would be made to Modules 1-6 of the FASRG.

#### *Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices*

Module 1 would align with current governmental accounting standards. Proposed Module 1 would include the following significant changes. School districts and charter schools would be required to maintain proper budgeting and financial accounting and reporting systems. In addition, school districts would be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the Governmental Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

#### *Module 2, Special Supplement - Charter Schools*

Module 2 would align with current financial and accounting reporting standards. Proposed Module 2 would include the following significant changes. The proposed module would establish financial and accounting requirements for Texas public charter schools to ensure uniformity in accounting in conformity with GAAP. The proposed module would also include current guidance that complements the American Institute of Certified Public Accountants (AICPA) *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States Government Accountability Office (GAO). These requirements facilitate preparation of financial statements that conform to GAAP established by the FASB.

### *Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts*

Module 3 would align with current governmental accounting standards. Proposed Module 3 would include the following significant changes. Charter schools would be required to maintain proper budgeting and financial accounting and reporting systems that are in conformity with Texas Education Data Standards (TEDS) in the Texas Student Data Systems (TSDS) PEIMS. In addition, charter schools would be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the FASB. The proposed module would also include current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements facilitate preparation of financial statements that conform to GAAP established by the FASB.

### *Module 4, Auditing*

Module 4 would align with current governmental auditing standards. Proposed Module 4 would include the following significant changes. The proposed module would establish auditing requirements for Texas public school districts and charter schools and include current requirements from Texas Education Code (TEC), §44.008, as well as Title 2, Code of Federal Regulations, Part 200, Subpart F, Audit Requirements, that implement the federal Single Audit Act. The proposed module would also include current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements facilitate preparation of financial statements that conform to GAAP established by the GASB.

### *Module 5, Purchasing*

Module 5 would align with current purchasing laws and standards. Proposed Module 5 would include the following significant changes. School districts and charter schools would be required to establish procurement policies and procedures that align with their unique operating environment and ensure compliance with relevant statutes and policies.

### *Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System*

Module 6 would align with current governmental accounting standards. Proposed Module 6 would include the following significant changes. School districts and charter schools would be required to maintain proper budgeting and financial accounting and reporting systems. The module would provide current information to assist local school officials' understanding of the numerous options for use of the state compensatory education allotment and provide current guidance for compliance.

The FASRG modules are available electronically on the Texas Education Agency (TEA) website at <https://tea.texas.gov/finance-and-grants/financial-accountability/financial-accountability-system-resource-guide>.

The SBOE approved the proposed amendment for first reading and filing authorization at its January 29, 2021 meeting.

**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 required to comply with the proposal.

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand and limit an existing regulation. The proposal would amend requirements and provide updated governmental accounting and auditing standards. In some instances, the proposed changes would add information, and in some instances, information would be removed.

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 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 ensuring that the provisions of the FASRG align with current governmental accounting and auditing standards for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins March 5, 2021, and ends at 5:00 p.m. on April 9, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBOE\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in April 2021 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 5, 2021.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.055(b)(32), which requires the commissioner to perform duties in connection with the public school accountability system as prescribed by TEC, Chapters 39 and 39A; TEC, §7.102(c)(32), which requires the State Board of Education (SBOE) to adopt rules concerning school district budgets and audits of school district fiscal accounts as required under TEC, Chapter 44, Subchapter A; TEC, §44.001(a), which requires the commissioner to establish advisory guidelines relating to the fiscal management of a school district; TEC, §44.001(b), which requires the commissioner to report annually to the SBOE the status of school district fiscal management as reflected by the advisory guidelines and by statutory requirements; TEC, §44.007(a), which requires the board of trustees of each school district to adopt and install a standard school fiscal accounting system that conforms with generally accepted accounting principles; TEC, §44.007(b), which requires the accounting system to meet at least the minimum requirements prescribed by the commissioner, subject to review and comment by the state auditor; TEC, §44.007(c), which requires a record to be kept of all revenues realized and of all expenditures made during the fiscal year for which a budget is adopted. A report of the revenues and expenditures for the preceding fiscal year is required to be filed with the agency on or before the date set by the SBOE; TEC, §44.007(d), which requires each district, as part of the report required by TEC, §44.007, to include management, cost accounting, and financial information in a format prescribed by the SBOE in a manner sufficient to enable the board to monitor the funding process and determine educational system costs by district, campus, and program; and TEC, §44.008(b), which requires the independent audit to meet at least the minimum requirements and be in the format prescribed by the SBOE, subject to review and comment by the state auditor. The audit must include an audit of the accuracy of the fiscal information provided by the district through the Public Education Information Management System.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.055(b)(32), 7.102(c)(32), 44.001(a) and (b), 44.007(a)-(d), and 44.008(b).

§109.41. *Financial Accountability System Resource Guide.*

The rules for financial accounting are described in the official Texas Education Agency (TEA) publication *Financial Accountability System Resource Guide*, dated June 2021 [July 2019], which is adopted by this reference as the agency's official rule. A copy is available on the TEA website with information related to financial compliance [for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701].

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 22, 2021.

TRD-202100702

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: April 4, 2021

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



## SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTING GUIDELINES

### 19 TAC §109.5001

The Texas Education Agency (TEA) proposes new §109.5001, concerning financial accounting guidelines. The proposed new rule would adopt by reference the *Financial Accountability System Resource Guide* (FASRG), dated June 2021.

BACKGROUND INFORMATION AND JUSTIFICATION: The FASRG describes the rules of financial accounting for school districts, charter schools, and education service centers. Requirements for financial accounting and reporting are derived from generally accepted accounting principles (GAAP). School districts and charter schools are required to adhere to GAAP. Legal and contractual considerations typical of the government environment are reflected in the fund structure basis of accounting.

An important function of governmental accounting systems is to enable administrators to assure and report on compliance with finance-related legal provisions. This assurance and reporting means that the accounting system and its terminology, fund structure, and procedures must be adapted to satisfy finance-related legal requirements. However, the basic financial statements of school districts and charter schools should be prepared in conformity with GAAP.

School district and charter school accounting systems shall use the accounting code structure presented in the account code section of the FASRG (Module 1). Funds shall be classified and identified on required financial statements by the same code number and terminology provided in the account code section of the FASRG (Module 1).

The FASRG, dated June 2021, contains six modules on the following topics: Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices; Module 2, Special Supplement - Charter Schools; Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts; Module 4, Auditing; Module 5, Purchasing; and Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System.

State law provides authority for both the State Board of Education (SBOE) and the commissioner of education to adopt rules on financial accounting. The SBOE adopts the FASRG by reference under 19 TAC §109.41. Proposed new §109.5001 would adopt the FASRG, dated June 2021, by reference under the commissioner's authority.

The FASRG is posted on the TEA website at <https://tea.texas.gov/finance-and-grants/financial-accountability/financial-accountability-system-resource-guide>.

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

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

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic

impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation. The proposed new rule would mirror an existing SBOE rule, which also adopts by reference the FASRG.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, 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 ensuring that the provisions of the FASRG align with current governmental accounting and auditing standards for school districts and charter schools. 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 March 5, 2021, and ends April 5, 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 March 5, 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 new section is proposed under Texas Education Code (TEC), §7.055(b)(32), which requires the commissioner to perform duties in connection with the public school accountability system as prescribed by TEC, Chapters 39 and 39A; TEC, §44.001(a), which requires the commissioner to establish advisory guidelines relating to the fiscal management of a school district; TEC, §44.001(b), which requires the commissioner to report annually to the State Board of Education (SBOE) the

status of school district fiscal management as reflected by the advisory guidelines and by statutory requirements; TEC, §44.007(a), which requires the board of trustees of each school district to adopt and install a standard school fiscal accounting system that conforms with generally accepted accounting principles; TEC, §44.007(b), which requires the accounting system to meet at least the minimum requirements prescribed by the commissioner, subject to review and comment by the state auditor; TEC, §44.007(c), which requires a record to be kept of all revenues realized and of all expenditures made during the fiscal year for which a budget is adopted. A report of the revenues and expenditures for the preceding fiscal year is required to be filed with the agency on or before the date set by the SBOE; TEC, §44.007(d), which requires each district, as part of the report required by TEC, §44.007, to include management, cost accounting, and financial information in a format prescribed by the SBOE in a manner sufficient to enable the board to monitor the funding process and determine educational system costs by district, campus, and program; and TEC, §44.008(b), which requires the independent audit to meet at least the minimum requirements and be in the format prescribed by the SBOE, subject to review and comment by the state auditor. The audit must include an audit of the accuracy of the fiscal information provided by the district through the Public Education Information Management System.

**CROSS REFERENCE TO STATUTE.** The new section implements Texas Education Code, §§7.055(b)(32), 44.001(a) and (b), 44.007(a)-(d), and 44.008(b).

§109.5001. Financial Accountability System Resource Guide.

The rules for financial accounting are described in the official Texas Education Agency (TEA) publication Financial Accountability System Resource Guide, dated June 2021, which is adopted by this reference as the agency's official rule. A copy is available on the TEA website with information related to financial compliance.

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

Filed with the Office of the Secretary of State on February 22, 2021.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: April 4, 2021

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



## TITLE 22. EXAMINING BOARDS

### PART 14. TEXAS OPTOMETRY BOARD

#### CHAPTER 273. GENERAL RULES

##### 22 TAC §273.16

The Texas Optometry Board proposes new 22 TAC §273.16 Licensee Compliance With Board Investigations and Inspections, regarding a licensee's obligation to cooperate with requests from the agency during an investigation and/or inspection conducted pursuant to Sections 351.157 and 351.1575 of the Texas Occupations Code. This new rule will create clear requirements

of a licensee's obligations during an investigation and/or inspection. This new rule will also increase the agency's ability to obtain relevant information in an investigation and/or inspection within a reasonable time frame in order to resolve matters in a timely manner.

Kelly Parker, Executive Director, has determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated is that patient complaints resulting in investigations will be processed more efficiently and within the targeted case resolution time frame set by the Legislative Budget Board.

It is anticipated that there will be no economic costs for optometrists and therapeutic optometrists. The new rule is necessary to carry out the duties of the regulatory agency and protect the health, safety, and welfare of the residents of this state.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

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

#### ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule 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.

#### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed rule will be in effect, it is anticipated that the proposed rule will not create or eliminate a government program as no program changes are proposed. Further, implementation of the proposed rule will not require the creation of new employee position or the elimination of an existing employee position; and implementation of the proposed rule will not require an increase or decrease in fees paid to the agency. The proposed rule creates a new regulation but the number of individual's subject to the rule does not change. There will be no effect on the state's economy and there will be no requests for legislative appropriations associated with the new rule.

**PUBLIC COMMENTS** Comments on the proposed rule may be submitted electronically to: [kelly.parker@tob.texas.gov](mailto:kelly.parker@tob.texas.gov), Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is 30 days after publication in the *Texas Register*.

#### STATUTORY AUTHORITY.

The new rule is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.308. The Texas Optometry Board interprets §351.151 as authorizing the adoption of

procedural and substantive rules for the regulation of the optometric profession.

No other sections are affected by the amendments.

#### §273.16. Licensee Compliance With Board Investigations and Inspections.

(a) Upon a request of the Board or Board staff, a licensee shall furnish to the Board complete copies of patient records within 14 days of the written request. The patient's privilege against disclosure does not apply to the Board in a disciplinary investigation or a proceeding under the Optometry Practice Act.

(b) Failure to timely respond to a request for records may be grounds for disciplinary action and/or administrative penalties.

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 19, 2021.

TRD-202100680

Kelly Parker

Executive Director

Texas Optometry Board

Earliest possible date of adoption: April 4, 2021

For further information, please call: (512) 305-8502



## CHAPTER 275. CONTINUING EDUCATION

### 22 TAC §275.2

The Texas Optometry Board proposes amendments to §275.2, concerning Required Education, to clarify continuing education requirements related to the human trafficking course required by §116.002 of the Occupations Code. The Texas Optometry Board implemented a biennial renewal system as of January 1, 2021. This amendment simply clarifies the requirements of the human trafficking requirement during the transition to the biennial license.

The amendment is necessary to protect the health, safety, and welfare of the residents of this state. The amendment applies to all licensed optometrists and it is predicted that there will be no economic costs for licensees' subject to the amendment.

Kelly Parker, Executive Director of the Texas Optometry Board, estimates that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment. Ms. Parker has also determined that for each of the first five years the amendment is in effect, the public benefit anticipated is that licensees will continue to receive human trafficking education during each biennial renewal cycle.

The amendment is necessary to protect the health, safety, and welfare of the residents of this state. The amendment applies to all licensed optometrists and it is predicted that there will be no economic costs for licensees' subject to the amendment.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the pro-

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

#### ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental amendment" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment 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.

#### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed amendment will be in effect, it is anticipated that the proposed amendment will not create or eliminate a government program. Further, implementation of the proposed amendment will not require the creation of new employee position or the elimination of an existing employee position; implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency; and the proposed amendments will not require an increase or decrease in fees paid to the agency. The proposed amendment does not create a new regulation but does amend a current rule to require the completion of additional continuing education. The proposed amendment does not change the number of individuals' subject to the amendment, and the effect on the state's economy is neutral.

#### PUBLIC COMMENTS

Comments on the proposed amendment may be submitted electronically to: [kelly.parker@tob.texas.gov](mailto:kelly.parker@tob.texas.gov), Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151.

No other sections are affected by the amendments.

#### §275.2. Required Education.

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

(g) Requirements for renewal of license imposed by other state law. A licensee that fails to timely meet these requirements may not renew the license.

(1) Two-hour controlled substances prescribing course. Section 481.07635 of the Health and Safety Code requires each active optometric glaucoma specialist licensed prior to September 1, 2020, to complete two hours of continuing education related to approved procedures of prescribing and monitoring controlled substances on or before September 1, 2021. Each active optometric glaucoma specialist licensed after September 1, 2020, must complete the continuing education required by this subsection within one year of the initial optometric glaucoma specialist license date. Licensees will receive two credit hours upon submission of written proof of completion of the approved course. This is a one-time education requirement. The taking of board-approved courses described in this subsection in sub-

sequent years may satisfy the professional responsibility requirement of §275.1(b) of this title (related to General Requirements).

(2) One-hour opioid prescribing course. To renew a license for 2021 and subsequent years, §481.0764 of the Health and Safety Code requires all active licensees who prescribe or dispense opioids to take each year a one-hour board-approved continuing education course covering best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments. Licensees will receive one credit hour upon submission of written proof of completion of the approved course.

(3) One-hour human trafficking course. Not later than January 1, 2021, [To renew a license for 2021 and subsequent years, §116.002 of the Occupations Code requires] all active licensees who provide direct patient care must submit proof of completion of a one-hour human trafficking course approved by the Texas Health and Human Services Commission as required by §116.002 of the Occupations Code [to complete a training course on identifying and assisting victims of human trafficking]. Commencing effective January 1, 2022, all active licensees who provide direct patient care shall complete one hour of human trafficking continuing education prior to each biennial renewal as required by §116.003 of the Occupations Code. The courses taken to satisfy the human trafficking requirement shall include information on identifying and assisting victims of human trafficking and be approved by the Texas Health and Human Services Commission. [Licensees will receive one general credit hour upon submission of written proof of completion of the approved course.]

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 19, 2021.

TRD-202100681

Kelly Parker

Executive Director

Texas Optometry Board

Earliest possible date of adoption: April 4, 2021

For further information, please call: (512) 305-8502



## CHAPTER 279. INTERPRETATIONS

### 22 TAC §279.16

The Texas Optometry Board proposes amendments to §279.16, concerning Telehealth Services, to allow the remote treatment and examination of patients as authorized by amendments to Texas Occupations Code Chapter 111. The rule amendments set out the establishment of the optometrist-patient relationship and standard of care requirements for the practice of telehealth as well as notice and patient record requirements. The amendments do not change the requirement in §279.1, concerning Contact Lens Examination, and §279.3, concerning Spectacle Examination, that an optometrist or therapeutic optometrist must make and record in person the findings required by Texas Occupations Code §351.353.

Kelly Parker, Executive Director, also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that patients may be treated without the inconvenience and possible extra expense of an office visit

for every optometric issue. The legislature has recognized that technology and training have made the provision of telehealth possible for many health issues and treatments. This may be especially the case for rural residents and for those patients who might be at a health risk seeking treatment at an ophthalmic office.

It is anticipated that there will be no economic costs for optometrists and therapeutic optometrists. As for patients, it is anticipated that transportation costs (including expenses for missed work hours) may be substantially reduced, and in some cases treatment costs may be moderated.

The amendments are necessary to protect the health, safety, and welfare of the residents of this state. The amendments implement Senate Bill 1107, 85th Legislature, Regular Session.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

The agency licenses approximately 4,600 optometrists affected by the rule amendments. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro-business. Some of these practices are in rural communities. The agency does not license these practices; it only licenses individual optometrists. The projected economic impact of this new rule on the small businesses and rural communities is projected to be neutral based on the analysis in the preceding paragraphs.

#### ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule 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.

#### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed rule will be in effect, it is anticipated that the proposed rule will not create or eliminate a government program as no program changes are proposed. Further, implementation of the proposed amendments will not require the creation of a new employee position or the elimination of an existing employee position; and implementation of the proposed amendments will not require an increase or decrease in fees paid to the agency.

The proposed amendments do not create a new regulation but do amend current rules. The proposed amendments do not change the number of individuals subject to the rule. Based on the analysis of the new examination and treatment modalities discussed above, the effect on the state's economy is predicted to be neutral.

Comments on the proposal may be submitted to Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendments are proposed under the Texas Occupations Code, Chapter 111 (§§111.001-111.003, 111.005-111.007) and §§351.151.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets Chapter 111 as setting the requirements for the provision of telehealth by health care professionals in Texas.

No other sections are affected by the amendments.

#### §279.16. Telehealth Services.

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

(1) Store and forward technology. As defined in Texas Occupations Code §111.001(2). [~~Established treatment site—A location where a patient will present to seek optometric care where there is an optometrist, therapeutic optometrist or physician present and sufficient technology and equipment to allow for an adequate physical evaluation as appropriate for the patient's presenting complaint. It requires an optometrist-patient relationship. A patient's private home is not considered an established medical site.~~]

(2) Telehealth services. As defined in Texas Occupations Code §111.001(3). [~~Face-to-face visit—An evaluation performed on a patient where the provider and patient are both at the same physical location or where the patient is at an established medical site.~~]

(3) Licensed optometrist or therapeutic optometrist. As defined in Texas Occupations Code §351.251. [~~In-person evaluation—A patient evaluation conducted by a provider who is at the same physical location as the location of the patient.~~]

~~[(4) Provider—An optometrist or therapeutic optometrist holding an active Texas license.]~~

~~[(5) Distant sight provider—The provider providing the telehealth service from a site other than the patient's current location.]~~

~~[(6) Telehealth service—A health service, other than a telemedicine service, that is delivered by a licensed optometrist or therapeutic optometrist acting within the scope of his or her license, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:]~~

~~[(A) compressed digital interactive video, audio, or data transmission;]~~

~~[(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and]~~

~~[(C) other technology that facilitates access to health care services or optometric specialty expertise.]~~

(b) Practitioner-Patient Relationship for Telehealth Services. A valid practitioner-patient relationship is present when the optometrist:

(1) has a preexisting practitioner-patient relationship with the patient; or,

(2) provides the telehealth services through the use of one of the following methods, as long as the practitioner complies with the follow-up requirements in subsection (b)(2)(D) of this section, and the method allows the practitioner to have access to, and the practitioner uses, the relevant clinical information that would be required in accordance with the standard of care described in Texas Occupations Code §111.007:

(A) synchronous audiovisual interaction between the practitioner and the patient in another location;

(B) asynchronous store and forward technology, including asynchronous store and forward technology in conjunction with synchronous audio interaction between the practitioner and the patient in another location, as long as the practitioner uses clinical information from clinically relevant photographic or video images, including diagnostic images; or the patient's relevant medical records, such as the relevant medical history, laboratory and pathology results, and prescriptive histories; or

(C) another form of audiovisual telecommunication technology that allows the practitioner to comply with the standard of care described in Texas Occupations Code §111.007.

(D) A practitioner who provides telehealth services to a patient as described in subsection (b)(2)(B) of this section shall:

(i) provide the patient with guidance on appropriate follow-up care; and

(ii) if the patient consents and the patient has a primary optometrist, provide to the patient's primary optometrist within 72 hours after the practitioner provides the services to the patient a medical record or other report containing an explanation of the treatment provided by the practitioner to the patient and the practitioner's evaluation, analysis, or diagnosis, as appropriate, of the patient's condition.

(c) [(b)] Fraud and Abuse Prevention.

[(1)] All optometrists or therapeutic optometrists that use telehealth services in their practices shall adopt protocols to prevent fraud and abuse through the use of telehealth services. [These standards shall be consistent with those established by the Texas Health and Human Services Commission pursuant to §531.02161 of the Government Code.]

[(2) In order to establish that an optometrist or therapeutic optometrist has made a good faith effort in the licensee's practice to prevent fraud and abuse through the use of telehealth services, the optometrist or therapeutic optometrist must implement written protocols that address the following:]

[(A) authentication and authorization of users;]

[(B) authentication of the origin of information;]

[(C) the prevention of unauthorized access to the system or information;]

[(D) system security, including the integrity of information that is collected,] program integrity, and system integrity;

[(E) maintenance of documentation about system and information usage;]

[(F) information storage, maintenance, and transmission; and]

[(G) synchronization and verification of patient profile data.]

(d) [(e)] Notice.

(1) Privacy Practices.

(A) Unless previously provided, optometrists or therapeutic optometrists [Providers] that communicate with patients by electronic communications other than telephone or facsimile must provide patients with written notification of the optometrists' or therapeutic optometrists' [providers'] privacy practices prior to evaluation or treatment, with [; In addition,] a good faith effort [must be made] to obtain

the patient's written acknowledgement, including by e-mail, of the notice.

(B) The notice of privacy practices shall include language that is consistent with federal standards under 45 C.F.R. [CFR] Parts 160 and 164 relating to privacy of individually identifiable health information.

(2) The optometrist or therapeutic optometrist providing or facilitating the use of telehealth services shall ensure that the informed consent of the patient, or another appropriate individual authorized to make health care treatment decisions for the patient, is obtained before telehealth services are provided. [Limitations of Telehealth. Providers who use telehealth services must, prior to providing services, give their patients notice regarding telehealth services, including the risks and benefits of being treated via telehealth; how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or in the event of an inability to communicate as a result of a technological or equipment failure. A signed and dated notice, including an electronic acknowledgement, by the patient establishes a presumption of notice.]

(3) [Necessity of In-Person Evaluation. When, for whatever reason, the telehealth modality in use for a particular patient encounter is unable to provide all pertinent clinical information that a health care provider exercising ordinary skill and care would deem reasonably necessary for the practice of optometry or therapeutic optometry at an acceptable level of safety and quality in the context of that particular encounter, then the distant site provider must make this known to the patient and advise and counsel the patient regarding the need for the patient to obtain an additional in-person evaluation reasonably able to meet the patient's needs.]

[(4)] Complaints to the Board. Optometrists or therapeutic optometrists that use telehealth services must provide notice of how patients may file a complaint with the Board on the optometrist's or therapeutic optometrist's website or with informed consent materials provided to patients prior to rendering telehealth services.

(c) [(d)] Minimum Standards. An optometrist or therapeutic optometrist providing a health care service or procedure as a telehealth service is subject to the same standard of care that would apply to the provision of the same health care service or procedures in an in-person setting. An optometrist or therapeutic optometrist providing a telehealth service must: [Services Provided at an Established Medical Site. Telehealth services provided at an established medical site may be used for all patient visits, including initial evaluations to establish a proper doctor-patient relationship between a distant site provider and a patient.]

(1) establish a practitioner-patient relationship; [a provider or licensed physician must be reasonably available onsite at the established medical site to assist with the provision of care.]

(2) maintain complete and accurate medical records as set out in §277.7 of this title (relating to Patient Records in Chapter 277, Practice and Procedure); and [A distant site provider may authorize an assistant at the established medical site to perform the procedures authorized by §279.1 and §279.3 of this title (relating to Contact Lens Examination and Spectacle Examination), subject to the same requirements as provided in those sections.]

(3) meet the minimum standard of care for the initial examination of a patient for whom an ophthalmic lens prescription is signed under Texas Occupations Code §351.353.

(f) [(e)] Issuance of Prescriptions. Evaluation and Treatment of the Patient.



(1) A prescription issued as a result of a telehealth service is subject to the same standards as an in-person setting. [Distant site providers who utilize telehealth services must ensure that a proper provider-patient relationship is established which at a minimum includes:]

~~[(A) establishing that the person requesting the treatment is in fact whom he/she claims to be;]~~

~~[(B) establishing a diagnosis through the use of acceptable medical practices, including patient history, mental status examination, physical examination (unless not warranted by the patient's mental condition), and appropriate diagnostic and laboratory testing to establish diagnoses, as well as identify underlying conditions or contra-indications, or both, to treatment recommended or provided;]~~

~~[(C) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and]~~

~~[(D) ensuring the availability of the distant site provider or coverage of the patient for appropriate follow-up care.]~~

(2) A therapeutic optometrist shall meet the standard of care and demonstrate professional practice standards and judgment, consistent with all applicable statutes and rules when issuing, dispensing, delivering, or administering a prescription medication as a result of a telehealth service. [Treatment. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional in-person clinical settings.]

(3) An optometrist or therapeutic optometrist shall meet the standard of care and demonstrate professional practice standards and judgment, consistent with all applicable statutes and rules when prescribing or fitting lenses or prisms as a result of a telehealth service.

(4) A valid prescription shall be issued for a legitimate medical purpose, for any pharmaceutical agent or for ophthalmic goods or procedures by an optometrist or therapeutic optometrist as part of practitioner-patient relationship as set out in subsection (b) of this section. A valid prescription for a prescription for any pharmaceutical agent shall meet all applicable laws regarding the prescribing, dispensing, delivering or administering of a dangerous drug or controlled substance. A valid prescription for ophthalmic goods or procedures shall meet all applicable requirements of Texas Occupations Code, Chapter 351.

(g) ~~[(f) Technology and]~~ Security Requirements. Adequate measures must be implemented to ensure that patient communications, recordings and records are protected consistent with Federal and State privacy laws.

~~[(1) At a minimum, advanced communication technology must be used for all patient evaluation and treatment conducted via telehealth.]~~

~~[(2) Adequate security measures must be implemented to ensure that all patient communications, recordings and records remain confidential.]~~

~~[(3) Electronic Communications.]~~

~~[(A) Written policies and procedures must be maintained when using electronic mail for provider-patient communications. Policies must be evaluated periodically to make sure they are up to date. Such policies and procedures must address:]~~

~~[(i) privacy to assure confidentiality and integrity of patient-identifiable information;]~~

~~[(ii) health care personnel, in addition to the provider, who will process messages;]~~

~~[(iii) hours of operation and availability;]~~

~~[(iv) types of transactions that will be permitted electronically;]~~

~~[(v) required patient information to be included in the communication, such as patient name, identification number and type of transaction;]~~

~~[(vi) archival and retrieval; and]~~

~~[(vii) quality oversight mechanisms.]~~

~~[(B) All relevant provider-patient e-mail, as well as other patient-related electronic communications, must be stored and filed in the patient record.]~~

~~[(C) Patients must be informed of alternative forms of communication for urgent matters.]~~

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 19, 2021.

TRD-202100682

Kelly Parker

Executive Director

Texas Optometry Board

Earliest possible date of adoption: April 4, 2021

For further information, please call: (512) 815-2463



## TITLE 25. HEALTH SERVICES

### PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

#### CHAPTER 702. INSTITUTE STANDARDS ON ETHICS AND CONFLICTS, INCLUDING THE ACCEPTANCE OF GIFTS AND DONATIONS TO THE INSTITUTE

##### 25 TAC §702.19

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes an amendment to 25 TAC §702.19(b) allowing an exception to the general communication prohibition between grant applicant and a member of the Scientific Research and Prevention Programs Committee regarding the substance of a pending application.

##### Background and Justification

Until a grant applicant receives final notice regarding the outcome of a grant application, §702.19 prohibits discussion of the substance of a grant application between a grant applicant and a member of the Scientific Research and Prevention Programs Committee (SRPP), Program Integration Committee, or Oversight Committee. The proposed exception to §703.19(b) allows an SRPP member, assigned by the Product Development Review Council Chairperson, to participate in interviewing the grant

applicant as part of the business operations and management due diligence and/or intellectual property review process conducted by CPRIT contractors. The assigned SRPP member may communicate directly with the applicant during the due diligence interview to seek information that will assist the Product Development Review Council's grant evaluation. All grant applicants who reach the due diligence phase of the product development review process will be subject to this proposed exception and may communicate with the assigned SRPP member without violating §702.19. The Institute will maintain records of SRPP members assigned to participate in the due diligence interviews with grant applicants.

#### Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rule.

#### Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to enforcing the rule will be improved product development peer review.

#### Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule change will not affect small businesses, micro businesses, or rural communities.

#### Government Growth Impact Statement

The Institute, in accordance with 34 TAC §11.1, has determined that during the first five years that the proposed rule change will be in effect:

- (1) the proposed rule change will not create or eliminate a government program;
- (2) implementation of the proposed rule change will not affect the number of employee positions;
- (3) implementation of the proposed rule change will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule change will not affect fees paid to the agency;
- (5) the proposed rule change will not create new rule;
- (6) the proposed rule change will not expand existing rule;
- (7) the proposed rule change will not change the number of individuals subject to the rule; and
- (8) The rule change is unlikely to have an impact on the state's economy. Although the change is likely to have neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

Submit written comments on the proposed rule change to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than April 5, 2021. The Institute asks parties filing comments to indicate whether they support the rule revision proposed by the Institute and, if a party requests a change, to provide specific text to include in the rule. Parties

may submit comments electronically to [kdoyle@cpr.it.texas.gov](mailto:kdoyle@cpr.it.texas.gov) or by facsimile transmission to (512) 475-2563.

#### Statutory Authority

The Institute proposes the rule change under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter. Ms. Doyle has reviewed the proposed amendment and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

#### *§702.19. Restriction on Communication Regarding Pending Grant Application.*

(a) Communication regarding the substance of a pending Grant Application between the Grant Applicant and an Oversight Committee Member, a Program Integration Committee Member, or a Scientific Research and Prevention Programs Committee Member is prohibited.

(b) The prohibition on communication begins on the first day that Grant Applications for the Grant Mechanism are accepted by the Institute and extends until the Grant Applicant receives notice regarding a final decision on the Grant Application.

(1) The prohibition on communication does not apply to the time period when pre-applications or letters of interest are accepted.

(2) In special circumstances, an Oversight Committee Member or a Program Integration Committee Member may respond to a question or request for more information from a Grant Applicant so long as the response is made available to all Grant Applicants.

(3) The prohibition does not apply to a Scientific Research and Prevention Programs Committee Member who is assigned by the Product Development Review Council chairperson to participate in the business operations and management due diligence review and intellectual property review as described in Chapter 703 of this title (relating to Grants for Cancer Prevention and Research). A Scientific Research and Prevention Programs Committee Member, on behalf of the Product Development Review Council, may participate in the due diligence review process and ask clarifying questions of a Grant Applicant to gain substantive knowledge, which the Product Development Review Council will use in the review of the Grant Application.

(A) Each Grant Application recommended to the due diligence stage of review will be subject to the same review and participation by a Scientific Research and Prevention Programs Committee Member as described in paragraph (3) of this subsection.

(B) The Institute will maintain documentation of the Scientific Research and Prevention Programs Committee Members assigned to participate in due diligence review.

(c) Intentional, serious, or frequent violations of this rule may result in the disqualification of the Grant Applicant from further consideration for a Grant Award.

(d) This rule is not intended to prohibit open dialogue between the public and the Chief Executive Officer, a Program Integration Committee Member or a member of the Oversight Committee regarding the general status or nature of pending Grant Applications.

(e) The Chief Executive Officer may grant a waiver from the general prohibition on communication upon finding that the waiver is in the interest of promoting the objectives of the Institute and is not intended to give one or more Grant Applicants an unfair advantage. The waiver shall be provided to the Oversight Committee in writing at the time it is granted and state the reasons for the granting the waiver. The

waiver shall be included as part of the public information supporting the Chief Executive Officer's affidavit(s) for Grant Award recommendations in the Grant Review Cycle(s) corresponding to the waiver.

(f) A Program Integration Committee Member shall not communicate individually with one or more Oversight Committee Members about a Grant Award recommendation for a Grant Application in a pending Grant Review Cycle until such time that the Program Integration Committee has submitted the list of Grant Award Recommendations to the Oversight Committee and the Chief Executive Officer has submitted the written affidavit required by Chapter 703, §703.7 of this title (relating to Program Integration Committee Funding Recommendation). Nothing herein shall prohibit the Chief Executive Officer or a Program Integration Committee Member from responding to an individual Oversight Committee Member's question or request for more information so long as the response is made available to all Oversight Committee Members.

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 19, 2021.

TRD-202100685

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: April 4, 2021

For further information, please call: (512) 305-8487



## CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

### 25 TAC §703.10

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes an amendment to 25 Texas Administrative Code §703.10(c)(3) requiring a grant recipient to include applicable CPRIT grant identification numbers when acknowledging CPRIT funding in publications. Grammar and punctuation was corrected for clarity.

#### Background and Justification

The proposed amendment requires the grant recipient to include all applicable grant award identification number(s) when acknowledging Institute grant funding. CPRIT requires grant recipients to explicitly recognize the Institute in any publication that reports information developed with CPRIT grant funds, including scholarly publications. The change to require the grant award identification number(s) in the acknowledgement improves the Institute's ability to track the outcome of its funded grant projects.

Section 703.10(c)(3) requires CPRIT's grant contracts to include terms relating to a grant recipient's acknowledgement of CPRIT funding in a publication. The proposed amendment clarifies that effective September 1, 2021, the acknowledgment of CPRIT funding must include the applicable grant identification number of every Institute funded grant that contributes to a published work. The change would allow the Institute greater ease when tracking grant funding in published scholarly articles or journals.

#### Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rule.

#### Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to enforcing the rule will be clarification regarding the information the grant recipient must provide when acknowledging Institute funding in publications.

#### Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule change will not affect small businesses, micro-businesses, or rural communities.

#### Government Growth Impact Statement

The Institute, in accordance with 34 Texas Administrative Code §11.1, has determined that during the first five years that the proposed rule change will be in effect:

- (1) the proposed rule change will not create or eliminate a government program;
- (2) implementation of the proposed rule change will not affect the number of employee positions;
- (3) implementation of the proposed rule change will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule change will not affect fees paid to the agency;
- (5) the proposed rule change will not create new rule;
- (6) the proposed rule change will not expand existing rule;
- (7) the proposed rule change will not change the number of individuals subject to the rule; and
- (8) The rule change is unlikely to have an impact on the state's economy. Although the change is likely to have neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

Submit written comments on the proposed rule change to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than April 5, 2021. The Institute asks parties filing comments to indicate whether they support the rule revision proposed by the Institute and, if a party requests a change, to provide specific text to include in the rule. Parties may submit comments electronically to [kdoyle@cprit.texas.gov](mailto:kdoyle@cprit.texas.gov) or by facsimile transmission to (512) 475-2563.

#### Statutory Authority

The Institute proposes the rule change under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter.

There is no other statute, article, or code affected by these rules.

#### §703.10. Awarding Grants by Contract.

(a) The Oversight Committee shall negotiate on behalf of the state regarding the awarding of grant funds and enter into a written contract with the Grant Recipient.

(b) The Oversight Committee may delegate Grant Contract negotiation duties to the Chief Executive Officer and the General Counsel for the Institute. The Chief Executive Officer may enter into a written contract with the Grant Recipient on behalf of the Oversight Committee.

(c) The Grant Contract shall include the following provisions:

(1) If any portion of the Grant Contract has been approved by the Oversight Committee to be used to build a capital improvement, the Grant Contract shall specify that:

(A) The state retains a lien or other interest in the capital improvement in proportion to the percentage of the Grant Award amount used to pay for the capital improvement; and

(B) If the capital improvement is sold, then the Grant Recipient agrees to repay to the state the Grant Award used to pay for the capital improvement, with interest, and share with the state a proportionate amount of any profit realized from the sale;

(2) Terms relating to Intellectual Property Rights and the sharing with the Institute of revenues generated by the sale, license, or other conveyance of such Project Results consistent with the standards established by this chapter;

(3) Terms relating to publication of materials created with Grant Award funds or related to the Cancer Research or Cancer Prevention project that is the subject of the Grant Award, including an acknowledgement of Institute funding and copyright ownership, if applicable; [;]

(A) Acknowledgment of Institute funding must include the grant number of every Institute-funded grant contributing to the work memorialized in the publication; and

(B) Subparagraph (A) of this paragraph is effective beginning September 1, 2021;

(4) Repayment terms, including interest rates, to be enforced if the Grant Recipient has not used Grant Award funds for the purposes for which the Grant Award was intended;

(5) A statement that the Institute does not assume responsibility for the conduct of the Cancer Research or Cancer Prevention project, and that the conduct of the project and activities of all investigators are under the scope and direction of the Grant Recipient;

(6) A statement that the Cancer Research or Cancer Prevention project is conducted with full consideration for the ethical and medical implications of the project and that the project will comply with all federal and state laws regarding the conduct of the Cancer Research or Prevention project;

(7) Terms related to the Standards established by the Oversight Committee in Chapter 701 of this title (relating to Policies and Procedures) to ensure that Grant Recipients, to the extent reasonably possible, demonstrate good faith effort to purchase goods and services for the Grant Award project from suppliers in this state and from historically underutilized businesses as defined by Chapter 2161, Texas Government Code, and any other state law;

(8) An agreement by the Grant Recipient to submit to regular inspection reviews of the Grant Award project by Institute staff during normal business hours and upon reasonable notice to ensure compliance with the terms of the Grant Contract and continued merit of the project;

(9) An agreement by the Grant Recipient to submit Grant Progress Reports to the Institute on a schedule specified by the Grant Contract that includes [include] information on a grant-by-grant basis

quantifying the amount of additional research funding, if any, secured as a result of Institute funding;

(10) An agreement that, to the extent possible, the Grant Recipient will evaluate whether any new or expanded preclinical testing, clinical trials, Product Development, or manufacturing of any real or intellectual property resulting from the award can be conducted in this state, including the establishment of facilities to meet this purpose;

(11) An agreement that the Grant Recipient will abide by the Uniform Grant Management Standards (UGMS) adopted by the Governor's Office, if applicable, unless one or more standards conflicts with a provision of the Grant Contract, Chapter 102, Texas Health and Safety Code, or the Institute's administrative rules. Such interpretation of the Institute rules and UGMS shall be made by the Institute;

(12) An agreement that the Grant Recipient is under a continuing obligation to notify the Institute of any adverse conditions that materially impact milestones and objectives included in the Grant Contract;

(13) An agreement that the design, conduct, and reporting of the Cancer Research or Prevention project will not be biased by conflicting financial interest of the Grant Recipient or any individuals associated with the Grant Award. This duty is fulfilled by certifying that an appropriate written, enforced Conflict of Interest policy governs the Grant Recipient; [-]

(14) An agreement regarding the amount, schedule, and requirements for payment of Grant Award funds, if such advance payments are approved by the Oversight Committee in accordance with this chapter. Notwithstanding the foregoing, the Institute may require that up to ten percent of the final tranche of funds approved for the Grant Award must be expended on a reimbursement basis. Such reimbursement payment shall not be made until close out documents described in this section and required by the Grant Contract have been submitted and approved by the Institute;

(15) An agreement to provide quarterly Financial Status Reports and supporting documentation for expenses submitted for reimbursement or, if appropriate, to demonstrate how advanced funds were expended;

(16) A statement certifying that, as of June 14, 2013, the Grant Recipient has not made and will not make a contribution, during the term of the Grant Contract, to the Institute or to any foundation established specifically to support the Institute;

(17) A statement specifying the agreed effective date of the Grant Contract and the period in which the Grant Award funds must be spent. If the effective date specified in the Grant Contract is different from the date the Grant Contract is signed by both parties, then the effective date shall control;

(18) A statement providing for reimbursement with Grant Award funds of expenses made prior to the effective date of the Grant Contract at the discretion of the Institute. Pre-contract reimbursement shall be made only in the event that:

(A) The expenses are allowable pursuant to the terms of the Grant Contract;

(B) The request is made in writing by the Grant Recipient and approved by the Chief Executive Officer; and

(C) The expenses to be reimbursed were incurred on or after the date the Grant Award recommendation was approved by the Oversight Committee; [-]

(19) Requirements for closing out the Grant Contract at the termination date, including the submission of a Financial Status Report,

a final Grant Progress Report, an [a] equipment inventory, a HUB and Texas Business report, a revenue sharing form, a single audit determination report form and a list of contractual terms that extend beyond the termination date;

(20) A certification of dedicated Matching Funds equal to one-half of the amount of the Research Grant Award that includes the name of the Research Grant Award to which the matching funds are to be dedicated, as specified in Section §703.11 of this chapter (relating to Requirement to Demonstrate Available Funds for Cancer Research Grants);

(21) The project deliverables as described by the Grant Application and stated in the Scope of Work for the Grant Contract reflecting modifications, if any, approved during the Peer Review process or during Grant Contract negotiation; [and]

(22) An agreement that the Grant Recipient shall notify the Institute and seek approval for a change in effort for any of the Senior Members or Key Personnel of the research or prevention team listed on the Grant Application, including any proposed temporary leave of absence of a Principal Investigator, Program Director, or Company Representative; [-]

(23) An agreement that the Grant Recipient is legally responsible for the integrity of the fiscal and programmatic management of the organization; and .

(24) An agreement that the Grant Recipient is responsible for the actions of its employees and other research collaborators, including third parties, involved in the project. The Grant Recipient is responsible for enforcing its standards of conduct, taking appropriate action on individual infractions, and, in the case of financial conflict of interest, informing the Institute if the infraction is related to a Grant Award.

(d) The Grant Recipient's failure to comply with the terms and conditions of the Grant Contract may result in termination of the Grant Contract, pursuant to the process prescribed in the Grant Contract, and trigger repayment of the Grant Award funds.

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

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Heidi McConnell  
Chief Operating Officer  
Cancer Prevention and Research Institute of Texas  
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For further information, please call: (512) 305-8487



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER C. CRUDE OIL PRODUCTION TAX

###### 34 TAC §3.39

The Comptroller of Public Accounts proposes amendments to §3.39, concerning credits for qualifying low-producing oil leases. The amendments implement Senate Bill 925, 86th Legislature, 2019, effective September 1, 2019, relating to the calculation of daily production for purposes of the oil and gas production tax credits for low-producing wells and leases.

The comptroller amends the section by replacing "exemption" with "credit", "5.0% or less" with "less than 5.0%", and "well" with "lease" throughout to match statute.

In subsection (a), the comptroller alphabetizes and rennumbers the terms therein, removes unnecessary capitalization, and amends the terms to match statute.

The comptroller moves the definition of the term "Average taxable price of oil" from paragraph (3) to paragraph (1). The comptroller amends the definition of the term to improve readability and replaces the statutory reference with language based on Tax Code, §202.058 (Credits for Qualifying Low-Producing Oil Leases).

In paragraph (4), the comptroller replaces "no more" with "less", and adds "or produces less than 5.0% recoverable oil per barrel of produced water" to match statute. The comptroller adds language to reflect Senate Bill 925, concerning the computation method of the daily per well production from the lease. The comptroller removes the definition of "well day" from within the definition of qualifying low-producing lease in paragraph (4) and defines this term in paragraph (5). The comptroller removes "The lease may also qualify if the recoverable oil for a 90-day period prior to qualifying is 5.0% or less per barrel of produced water" as the amendments to the first sentence of this subsection provide this information.

The comptroller amends subsection (b) to improve readability and make formatting changes, amends paragraph (3) to include the title of form AP-216 (Texas Crude Oil Lease Exemption Application), and amends paragraph (6) by replacing the statutory reference with the actual language of Tax Code, §202.058(a)(2) concerning the treatment of a lease that meets the requirement of producing less than five percent recoverable oil per barrel of produced water.

In subsection (c), the comptroller replaces the statutory reference of Tax Code, §202.058(c), (d), and (e) with language to state the amount of the credit based on specific prices of oil.

The comptroller adds paragraph (5) to state that credits for low-producing leases may be combined with credits under Tax Code, §202.054 (Qualification of Oil from New or Expanded Enhanced Recovery Project for Special Tax Rate) or Tax Code, §202.0545 (Tax Exemption for Enhanced Recovery Projects Using Anthropogenic Carbon Dioxide).

In subsection (d), the comptroller amends language to improve readability and to include Tax Code, Chapter 201 as the credit can be taken against taxes due in Tax Code, Chapters 201 or 202, as provided by Tax Code, §202.058(g).

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the amendments: will not create or eliminate a government program; will not require the creation or elimination of 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 increase or decrease the number of individuals subject to the rules' applicabil-

ity; and will not positively or adversely affect this state's economy. This proposal amends the current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amendments would benefit the public by improving the administration of severance tax credits. The proposed amendments would have no significant fiscal impact on small businesses or rural communities. The proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendment implements Tax Code, §202.058 (Credits for Qualifying Low-Producing Oil Leases).

### §3.39. Credits for Qualifying Low-Producing Oil Leases.

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

(1) Average taxable price of oil--The price of oil, certified by the comptroller, determined by adding the closing price of each market day adjusted to 2005 dollars during the previous three months and dividing the sum by the total market days in the three-month period.

(2) ~~[(4)]~~ Commission--The Railroad Commission of Texas.

(3) ~~[(2)]~~ Operator--The person responsible under law or commission rules for the physical operation of a lease.

~~[(3)]~~ Average Taxable Price of Oil--The previous three month average price of oil using a price index listed in Tax Code, §202.058(e). The average will be computed by taking the closing price of each market day and dividing it by the total market days in the three-month period. This average price will then be adjusted to 2005 dollars.

(4) Qualifying low-producing lease [Qualified Low Producing Lease]~~--~~An oil lease that produces less [~~no more~~] than 15 barrels of oil per day of production per well or produces less than 5.0% recoverable oil per barrel of produced water during the three-month period prior to the beginning date of the credit [exemption]. For purposes of qualifying the lease, the production per day is determined by computing the average daily per well production from the lease using the greater of the monthly production from the lease as reported in the monthly lease [well] production reports [report] made to the commission and the monthly production from the lease as reported in the producer's reports made to the comptroller under Tax Code, §202.201 (Producer's Report), including any amendments to those reports, and dividing the sum of the production reported on the lease by the sum of the number of well days [~~where a well day is one well producing for one day~~]. The calculation will use the three-month period prior to the beginning date of the credit [exemption]. The lease may also qualify if the recoverable oil for a 90-day period prior to qualifying is 5.0% or less per barrel of produced water.

(5) Well day--One well producing for one day.

(b) To qualify a lease, the operator of the lease shall provide the following: [~~For each lease qualifying under this section, the comptroller will require the following information from the operator of the lease.~~]

(1) a [A] copy of the monthly production report made to the commission for the lease for the three-month period prior to the [exemption] beginning date of the credit;[-]

(2) a [A] list of the producing wells on the lease and supporting documentation to show the number of days each well was producing during the three-month period;[-]

(3) a [A] completed comptroller Texas Crude Oil Lease Tax Exemption Application (form AP-216) [exemption application] for the lease;[-]

(4) the [The] starting date that the lease met the three-month production limitations qualifying the well as a low-producing well;[-]

(5) a [A] statement as to whether tax has been paid on the crude oil for periods after the effective date of the credit [exemption], and the name of the party paying the tax; and[-]

(6) when production during a three-month period is less than 5.0% recoverable oil per barrel of produced water [If the lease is being qualified under Tax Code, §202.058(a)(2)(B)], the operator may submit [will need to send] documentation that the well meets this requirement [has a recoverable oil rate of 5.0% or less per barrel of produced water for the three-month period]. An example of acceptable documentation is a production record showing the amount of water produced and the amount of oil produced for the three-month period. A taxpayer requesting [getting] approval under this paragraph shall [section must] also send the \$100 filing fee with the application.

(c) The monthly average taxable price of oil will be published in the *Texas Register* the month following the actual production month. This publication will notify the taxpayer of the availability of the credit [exemption] prior to the due date of the report. Credits are as follows: [Tax Code, §202.058(e), (d), and (e) will be used to define the credit applicable for each reporting month.]

(1) if [If] the monthly average taxable price of oil is more than \$30 per barrel, there will be no credit [exemption] for that reporting month; [-]

(2) if [If] the monthly average taxable price of oil is more than \$25 per barrel, but not more than \$30 per barrel, there will be a 25% credit for oil sold from a qualified lease for that reporting month;[-]

(3) if [If] the monthly average taxable price of oil is more than \$22 per barrel, but not more than \$25 per barrel, there will be a 50% credit for oil sold from a qualified lease for that reporting month;[-]

(4) if [If] the monthly average taxable price of oil is \$22 per barrel or less, there will be a 100% credit for oil sold from a qualified lease for that reporting month; and[-]

(5) when available, tax credits provided for qualifying leases under this subsection may be combined with Tax Code, §202.054 (Qualification of Oil From New or Expanded Enhanced Recovery Project for Special Tax Rate) or §202.0545 (Tax Exemption for Enhanced Recovery Projects Using Anthropogenic Carbon Dioxide).

(d) If the tax is paid at the full rate provided by Tax Code, Chapter 202 (Oil Production Tax), on oil produced on or after the effective date of the tax credit [exemption] but before the date the comptroller approves an application for the tax credit [exemption], the operator is entitled to a credit on taxes due under Tax Code, Chapters [Chapter] 202 or 201, in an amount equal to the credit approved for that period.

To receive a credit, the operator or the party remitting the tax must apply to the comptroller by filing amended reports. If a party other than the operator has remitted the tax, the operator must provide the party remitting the tax a copy of the approved comptroller application form that provides that the lease qualifies for the tax credit [~~exemption~~].

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 22, 2021.

TRD-202100688

William Hamner

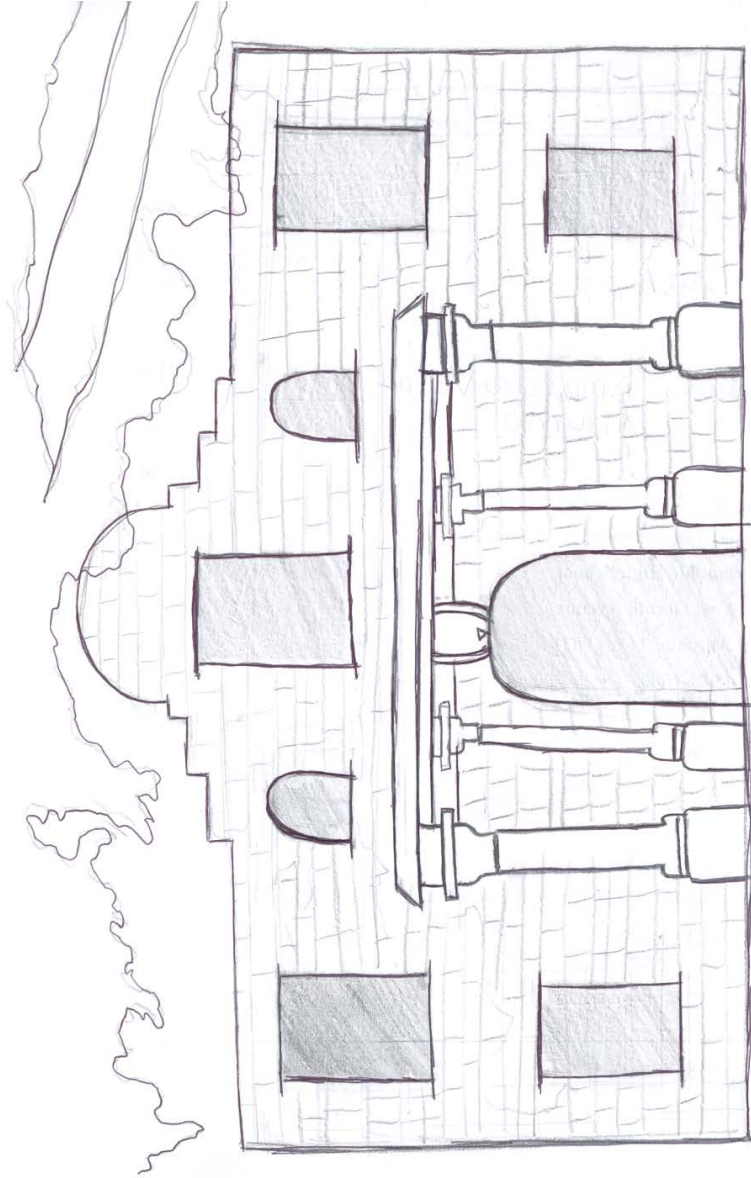
Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: April 4, 2021

For further information, please call: (512) 475-2220







# 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 7. BANKING AND SECURITIES

### PART 2. TEXAS DEPARTMENT OF BANKING

#### CHAPTER 33. MONEY SERVICES BUSINESSES

##### 7 TAC §33.13

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §33.13, concerning how to obtain a new license and the deadlines associated with applications. The amended rule clarifies the accepted payment form and refund of money services businesses (MSB) license application fees. The amended rule is adopted without changes to the proposed text as published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9372). The amended rule will not be republished.

##### Amendment to §33.13(d)(1)(B)

Current §33.13(d)(1)(B) requires an MSB license applicant to submit the application fee in the form of a check. In practice, an applicant will often submit the fee through the Nationwide Multistate Licensing System and Registry (NMLS). The adopted amendment clarifies that an applicant may submit the fee either through the NMLS or in the form of a check.

##### Amendment to §33.13(d)(2)

Current §33.13(d)(2) allows the department to return an MSB license application before processing if the application is missing one of the items required by §33.13(d)(1), such as the application fee, search firm reports, or financial statements. The department can determine if one of these items is missing with an initial cursory review of the application. If the application fee is submitted, but other items are missing, current §33.13(d)(2) allows the department to either return the application fee or apply it to a "promptly" submitted "subsequent application" containing the missing items. In most cases where the department receives an application missing the required items, an applicant submits the missing items within several business days and before the department returns the application or fee; therefore, the department applies the fee to the initial application and no subsequent application is submitted. If a subsequent application or the missing items are not submitted promptly, it is unclear under current §33.13(d)(2) whether the department is required to refund the fee.

The adopted amendment to §33.13(d)(2) eliminates the ambiguity of the term "promptly" by requiring the applicant to submit missing items within 10 days of the department receiving the application and removes reference to a "subsequent application."

The adopted amendment to §33.13(d)(2) also clarifies that the department will refund an application fee if the missing items are not submitted within 10 days. Thus, as adopted, §33.13(d)(2) allows the department to either: (1) return an application and refund the application fee; or (2) apply the fee to the application within 10 days if missing items are submitted. If missing items are not submitted within 10 days, the department will return the application and refund the fee.

##### Amendment to §33.13(f)

When an application contains all required items and is not returned, the department must process and investigate the application before it is accepted for filing. This often involves making a request for additional information from the applicant pursuant to §33.13(e)(1). After reviewing the additional information, the department can make follow-up requests for additional information pursuant to §33.13(f)(3). If the applicant does not provide the requested information, the application can be considered abandoned pursuant to TAC §33.13(g)(1), and the application fee is not refunded pursuant to §33.13(g)(2). After the department has fully processed and investigated an application, the department accepts the application for filing, and the application fee is non-refundable pursuant to §33.27(d)(1).

In a limited number of cases, an applicant withdraws the application and demands a refund of the fee after the department has made multiple requests for additional information and expended significant resources processing it, but before the department has accepted it for filing. Current §33.13 does not explicitly give the department the right to keep the application fee in these situations.

The adopted amendment to §33.13(f) clarifies at what point in the application process the application fee becomes non-refundable if the applicant withdraws the application. As amended, §33.13(f) provides that the application fee will not be refunded after the applicant responds to the department's initial request for additional information pursuant to §33.13(e)(1). Thus, as amended, after the department has requested additional information, an applicant will have the option to either: (1) allow the department to continue to process the application but not receive a refund if the application is later withdrawn; or (2) withdraw their application at that time and receive a refund.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Texas Finance Code, §151.102, which authorizes the commission to adopt rules for the regulation of money services businesses.

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 February 19, 2021.

TRD-202100679

Catherine Reyer

General Counsel

Texas Department of Banking

Effective date: March 11, 2021

Proposal publication date: December 25, 2020

For further information, please call: (512) 475-1301



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

##### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION

The Texas Education Agency (TEA) adopts amendments to §§89.1001, 89.1011, 89.1035, 89.1040, 89.1047, 89.1050, 89.1055, 89.1070, 89.1075, 89.1094, 89.1165, 89.1193, 89.1195, and 89.1197 and new 89.1005 and 89.1092, concerning special education services. The amendments to §§89.1035, 89.1070, and 89.1197 are adopted with changes to the proposed text as published in the October 16, 2020 issue of the *Texas Register* (45 TexReg 7363) and will be republished. The amendments to §§89.1001, 89.1011, 89.1040, 89.1047, 89.1050, 89.1055, 89.1075, 89.1094, 89.1165, 89.1193, and 89.1195 and new 89.1005 and 89.1092 are adopted without changes to the proposed text as published in the October 16, 2020 issue of the *Texas Register* (45 TexReg 7363) and will not be republished. The adopted revisions reflect changes resulting from state legislation and federal guidance; provide clarification related to the full individual and initial evaluation, contracting for services from non-public day schools, and placement of students with disabilities in off-campus programs; update references to statute and state agency names; and remove expired provisions.

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

##### *Division 1, General Provisions*

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

Adopted new §89.1005, Instructional Arrangements and Settings, is added as a result of House Bill (HB) 3, 86th Texas Legislature, 2019. HB 3 renumbered Texas Education Code (TEC), §42.151, to §48.102 and amended it to transfer rulemaking authority related to instructional arrangements for students with disabilities from the State Board of Education (SBOE) to

the commissioner of education. As a result, the language from 19 TAC §89.63 adopted under the SBOE's authority is adopted as new §89.1005. The adopted new rule is substantially similar to §89.63 and identifies provisions for instructional arrangements and settings, including mainstream, homebound, hospital class, speech therapy, resource room/services, self-contained (mild, moderate, or severe) regular campus, off-home campus, nonpublic day school, vocational adjustment class/program, residential care and treatment facility (not school district resident), and state-supported living center.

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

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

The adopted amendment to §89.1035, Age Ranges for Student Eligibility, updates cross references to 19 TAC §89.1070. In response to public comment, changes were made at adoption to update additional cross references to §89.1070.

The adopted amendment to §89.1040, Eligibility Criteria, implements changes to TEC, §30.002, by Senate Bill (SB) 522, 86th Texas Legislature, 2019, regarding evaluation of a student's visual impairment. Additionally, the amendment aligns the rule with federal guidance. The previous definition in §89.1040(c)(12) may have had the effect of narrowing the Individuals with Disabilities Education Act (IDEA) definition in 34 CFR, §300.8(c)(13), of "visual impairment including blindness." As noted by the May 22, 2017 Letter to State Directors of Special Education, Preschool/619 State Coordinators from the U.S. Department of Education, Office of Special Education Programs, because the IDEA definition of "visual impairment including blindness" does not contain a modifier to allow states to define a precise level of impairment, "any impairment in vision, regardless of significance or severity, must be included in a State's definition, provided that such impairment, even with correction, adversely affects a child's educational performance." (emphasis in original)

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

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

The adopted amendment to §89.1055, Content of the Individualized Education Program, removes provisions that expired at the beginning of the 2018-2019 school year. References to the 2018-2019 school year are removed from subsections (h) and (i).

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

updated. In response to public comment, changes were made at adoption to update cross references to 19 TAC §89.1070. A technical change was also made at adoption to replace the term "state assessments" with the term "end-of-course assessment instruments."

The adopted amendment to §89.1075, General Program Requirements and Local District Procedures, removes reference to TEC, §29.007, which was repealed by SB 1376, 86th Texas Legislature, 2019. In addition, language is added in subsection (f) to specify that school districts must comply with 19 TAC §89.1094 when contracting for services from non-public day schools.

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

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

#### *Division 7, Dispute Resolution*

Adopted amendments to §89.1165, Request for Special Education Due Process Hearing, §89.1193, Special Education Mediation, §89.1195, Special Education Complaint Resolution, and §89.1197, State Individualized Education Program Facilitation, allow for the filing by electronic mail of special education due process hearing requests, special education mediation requests, special education complaints, requests for reconsideration of special education investigative reports, and requests for a state-provided facilitator for an ARD committee meeting. In response to public comment, a change was made at adoption to §89.1197 to increase the number of days by when a parent and local education agency (LEA) may request a facilitated individualized education program (IEP) team meeting. An additional change to §89.1197 was made at adoption to update a cross reference to 19 TAC §89.1050.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began October 16, 2020, and ended November 16, 2020, and included public hearings on October 27 and 29, 2020. Following is a summary of the public comments received and corresponding responses.

**Comment:** The Texas Council of Administrators of Special Education (TCASE) noted that the terms "general education" and "regular education" are used inconsistently throughout the rules and recommended that the term "general education" be used throughout.

**Response:** The agency disagrees that the terms need to be updated since the two terms are synonymous.

**Comment:** The Texas Classroom Teachers Association (TCTA) supported the proposed amendment to §89.1005, explaining that it maintains the important elements of §89.63.

**Response:** The agency agrees.

**Comment:** Disability Rights Texas (DRTx) recommended amending the phrase "vocational adjustment class/program" in proposed new §89.1005(c)(9) by changing the word "class" to "course" in order to align with terminology used in the field. Additionally, DRTx recommended amending proposed new §89.1005(c)(9) to include the statement "regularly scheduled direct involvement by special education personnel may be varied during the placement if the student is documented as meeting or exceeding individual transition goals."

**Response:** The agency disagrees. The rule describes an instructional setting, which is the reason the term "class" is used. The term "course" refers to a curriculum, not a setting. In addition, the recommended language relating to direct involvement by special education personnel could possibly limit the protections inherit in the ARD committee process for developing a student's IEP. The recommended language is also inconsistent with the requirement of 34 Code of Federal Regulations (CFR), §300.320, that the ARD committee determine and the IEP state the location, duration, and frequency of the student's special education and related services.

**Comment:** The Texas School for the Blind and Visually Impaired (TSBVI) commented that §89.1035 should be amended to clarify and implement TEC, §30.021(e), by adding language that would allow certain students with visual impairments who have graduated with a diploma and whose eligibility for special education and related services has ended, although still within the age range for eligibility, to continue to be eligible so as to receive expanded core curriculum from TSBVI.

**Response:** The agency disagrees as the rule is not inconsistent with TEC, §30.021(e). However, TEA will continue to work with TSBVI and the Texas School for Deaf (TSD) to pursue solutions related to providing extended core curriculum as provided for in state law.

**Comment:** TSBVI supported changes to §89.1040(c)(12).

**Response:** The agency agrees.

**Comment:** TSBVI commented that language should be added to §89.1070(a) to provide that graduation with a diploma that ends eligibility for special education and related services would not end eligibility for a student who is blind or has a visual impairment and requires services from TSBVI pursuant to TEC, §30.021(e).

**Response:** The agency disagrees as the rule is not inconsistent with TEC, §30.021(e). However, TEA will continue to work with TSBVI and TSD to pursue solutions related to providing extended core curriculum as provided for in state law.

**Comment:** An individual questioned whether proposed changes to §89.1070 create new special education eligibility. Specifically, the individual questioned whether new subsection (b)(2) permits students who have passed all courses for graduation credit without a modified curriculum but whose ARD committee has not required them to perform satisfactorily on the state assessments to retain eligibility for special education and related services even after they have received a diploma. The individual recommended that §89.1070 clarify that students graduating under new §89.1070(b)(2) are no longer eligible for special education and related services.

Response: The agency disagrees with the recommended change and clarifies that new §89.1070(b)(2) does not create any new eligibility allowances. Instead, the new language seeks to align with existing allowable LEA reported graduation codes, which are based on the federal requirements of 34 CFR, §300.102. The federal requirements provide that eligibility for special education and related services ends with the award of a high school diploma that is fully aligned with state standards. Thus, if a student's ARD committee determines that successful performance on end-of-course assessments is not required and the student graduates under §89.1070(b)(2), the student continues to be eligible to return for additional special education and related services as allowed for in §89.1070(j) so long as the student meets the age eligibility requirement.

Comment: An individual noted that several cross references in proposed §89.1070 need to be updated.

Response: The agency agrees and has made the necessary changes at adoption.

Comment: TCTA supported the addition of language in §89.1011 that specifies that a student is not required to be provided with interventions for any specific length of time prior to a referral being made or a full individual and initial evaluation being conducted. Additionally, TCTA supported the clarification that full individual and initial evaluation may be initiated at any time by school personnel.

Response: The agency agrees.

Comment: TCASE noted that §89.1121(h) has an outdated weight for mainstream funding and that the subsection needs to be revised.

Response: This comment is outside the scope of the proposed rulemaking since no changes were proposed to §89.1121. However, the agency may consider the suggested changes in future rulemaking.

Comment: DRTx and TCASE noted that §89.1197(e)(2) and (3) could be deleted in order to allow for a greater opportunity for facilitated IEP team meetings to occur.

Response: The agency disagrees with striking §89.1197(e)(2) and (3) because the agency believes it is vitally important for families and school districts to work together locally to reach consensus on a student's educational programming. The state envisions a state-facilitator as being a next level of support for families and school districts only when required. However, the agency agrees that §89.1197(e)(3) could be updated to allow more opportunity for facilitation. At adoption, language was modified to extend the timeline for a request for IEP facilitation from five calendar days to ten calendar days after the ARD committee meeting that ended in disagreement.

Comment: DRTX and TCASE recommended that, if §89.1197(e)(2) is not deleted as recommended, the reference to §89.1050(f) be updated to §89.1050(g).

Response: The agency agrees. The reference to §89.1050(f) has been updated at adoption to §89.1050(g).

## DIVISION 1. GENERAL PROVISIONS

### 19 TAC §89.1001, §89.1005

STATUTORY AUTHORITY. The amendment and new section are adopted under Texas Education Code (TEC), §28.025, as amended by House Bill (HB) 165, 86th Texas Legislature, 2019, which establishes requirements, in part, for endorsements;

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

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

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 February 22, 2021.

TRD-202100694

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 14, 2021

Proposal publication date: October 16, 2020

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

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

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

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

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

*§89.1035. Age Ranges for Student Eligibility.*

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

(b) In accordance with the Texas Education Code (TEC), §§29.003, 30.002(a), and 30.081, a free appropriate public education must be available from birth to students with visual or auditory impairments.

*§89.1070. Graduation Requirements.*

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

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

(1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title (relating to Foundation High School Program) applicable to students in general education as well as satisfactory performance as established in the TEC, Chapter 39, on the required end-of-course assessment instruments.

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

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

(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district.

(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district.

(C) The student has access to services that are not within the legal responsibility of public education or employment or educational options for which the student has been prepared by the academic program.

(D) The student no longer meets age eligibility requirements.

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

(1) satisfactorily completes the requirements for graduation under the Foundation High School Program specified in §74.12 of this title as well as the additional credit requirements in mathematics, science, and elective courses as specified in §74.13(e) of this title with or without modified curriculum;

(2) satisfactorily completes the courses required for the endorsement under §74.13(f) of this title without any modified curriculum or with modification of the curriculum, provided that the curriculum, as modified, is sufficiently rigorous as determined by the student's ARD committee; and

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

(d) Notwithstanding subsection (c)(3) of this section, a student receiving special education services classified in Grade 11 or 12 who has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments is eligible to receive an endorsement if the student has met the requirements in subsection (c)(1) and (2) of this section.

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

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

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

(2) Notwithstanding paragraph (1) of this subsection, as the TEC, §28.0258 and §39.025(a-2), modify the state assessment requirements applicable to students in general education, a student receiving special education services who is classified in Grade 11 or 12 may graduate under the recommended or distinguished achievement high school program, as applicable, if the student has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments and has met all other applicable graduation requirements in paragraph (1) of this subsection.

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

(4) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title through courses, one or more of which contain modified content that is aligned to the standards required under the minimum high school program in Chapter 74, Subchapter F or G, of this title, as applicable, as well as the satisfactorily completed credit requirements under the minimum high school program, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation. The student graduating under this subsection must also successfully complete the student's IEP and meet one of the following conditions.

(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district.

(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district.

(C) The student has access to services that are not within the legal responsibility of public education or employment or educational options for which the student has been prepared by the academic program.

(D) The student no longer meets age eligibility requirements.

(g) All students graduating under this section must be provided with a summary of academic achievement and functional performance

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

(h) Students who participate in graduation ceremonies but who are not graduating under subsections (b)(3)(A), (B), or (C) or (f)(4)(A), (B), or (C) of this section and who will remain in school to complete their education do not have to be evaluated in accordance with subsection (h) of this section.

(i) Employability and self-help skills referenced under subsections (b)(3) and (f)(4) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.

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

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

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 February 22, 2021.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## DIVISION 7. DISPUTE RESOLUTION

### 19 TAC §§89.1165, 89.1193, 89.1195, 89.1197

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §28.025, as amended by House Bill (HB) 165, 86th Texas Legislature, 2019, which establishes requirements, in part, for endorsements; TEC, §29.001, which establishes general statutory authority for the state to develop, implement, and monitor a statewide plan for special education; TEC, §29.003, which establishes state-specific criteria related to eligibility requirements for special education; TEC, §29.004, which establishes state-specific criteria related to full individual and initial evaluations for special education; TEC, §29.005, which establishes state-specific criteria related to students' individualized education programs (IEPs); TEC, §29.010, which establishes requirements related to monitoring activities for special education; TEC, §29.011 and §29.0111, which establish requirements related to transition programming for students eligible for special education; TEC, §29.0151, as

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

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

#### §89.1197. *State Individualized Education Program Facilitation.*

(a) In accordance with the Texas Education Code, §29.020, the Texas Education Agency (TEA) will establish a program that provides independent individualized education program (IEP) facilitators beginning with the 2014-2015 school year.

(b) For the purpose of this section, IEP facilitation has the same general meaning as described in §89.1196(a) of this title (relating to Individualized Education Program Facilitation), except that state IEP facilitation is used when the admission, review, and dismissal (ARD) committee is in dispute about decisions relating to the provision of a free and appropriate public education to a student with a disability and the facilitator is an independent facilitator provided by the TEA.

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

(d) IEP facilitation under this section must be voluntary on the part of the parties and provided at no cost to the parties.

(e) In order for the TEA to provide an independent facilitator, the following conditions must be met.

(1) The required form must be completed and signed by both parties.

(2) The dispute must relate to an ARD committee meeting in which mutual agreement about one or more of the required elements

of the IEP was not reached and the parties have agreed to recess and reconvene the meeting in accordance with §89.1050(g) of this title (relating to The Admission, Review, and Dismissal Committee).

(3) The request for IEP facilitation must have been filed within 10 calendar days of the ARD committee meeting that ended in disagreement, and a facilitator must be available on the date set for reconvening the meeting.

(4) The dispute must not relate to a manifestation determination or determination of interim alternative educational setting under 34 Code of Federal Regulations (CFR), §300.530 or §300.531.

(5) The same parties must not be concurrently involved in special education mediation under §89.1193 of this title (relating to Special Education Mediation).

(6) The issues in dispute must not be the subject of a special education complaint under §89.1195 of this title (relating to Special Education Complaint Resolution) or a special education due process hearing under §89.1151 of this title (relating to Special Education Due Process Hearings) and §89.1165 of this title (relating to Request for Special Education Due Process Hearing).

(7) The same parties must not have participated in IEP facilitation concerning the same student under this section within the same school year of the filing of the current request for IEP facilitation.

(f) Within five business days of receipt of a request for an IEP facilitation under this section, the TEA will determine whether the conditions in subsections (c)-(e) of this section have been met and will notify the parties of its determination and the assignment of the independent facilitator, if applicable.

(g) Notwithstanding subsections (b)-(e) of this section, if a special education due process hearing or complaint decision requires a public education agency to provide an independent facilitator to assist with an ARD committee meeting, the public education agency may request that the TEA assign an independent facilitator. Within five business days of receipt of a written request for IEP facilitation under this subsection, the TEA will notify the parties of its decision to assign or not assign an independent facilitator. If TEA declines the request to assign an independent facilitator, the public education agency must provide an independent facilitator at its own expense.

(h) The TEA's decision not to provide an independent facilitator is final and not subject to review or appeal.

(i) The independent facilitator assignment may be made based on a combination of factors, including, but not limited to, geographic location and availability. Once assigned, the independent facilitator must promptly contact the parties to clarify the issues, gather necessary information, and explain the IEP facilitation process.

(j) The TEA will use a competitive solicitation method to seek independent facilitation services, and the contracts with independent facilitators will be developed and managed in accordance with the TEA's contracting practices and procedures.

(k) At a minimum, an individual who serves as an independent facilitator under this section:

(1) must have demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities;

(2) must have demonstrated knowledge of and experience with the ARD committee meeting process;

(3) must have completed 18 hours or more of training in IEP facilitation, consensus building, and/or conflict resolution as specified in the TEA's competitive solicitation;

(4) must complete continuing education as determined by the TEA;

(5) may not be an employee of the TEA or the public education agency that the student attends; and

(6) may not have a personal or professional interest that conflicts with his or her impartiality.

(l) An individual is not an employee of the TEA solely because the individual is paid by the TEA to serve as an independent facilitator.

(m) An independent facilitator must not be a member of the student's ARD committee, must not have any decision-making authority, and must remain impartial to the topics under discussion. The independent facilitator must assist with the overall organization and conduct of the ARD committee meeting by:

(1) assisting the committee in establishing an agenda and setting the time allotted for the meeting;

(2) assisting the committee in establishing a set of guidelines for the meeting;

(3) guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student;

(4) ensuring that each committee member has an opportunity to participate;

(5) helping to resolve disagreements that arise; and

(6) helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting.

(n) An independent facilitator must protect the confidentiality of personally identifiable information about the student and comply with the requirements in the Family Educational Rights and Privacy Act regulations, 34 CFR, Part 99, relating to the disclosure and redisclosure of personally identifiable information from a student's education record.

(o) The TEA will develop surveys to evaluate the IEP facilitation program and the independent facilitators and will request that parties who participate in the program complete the surveys.

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 February 22, 2021.

TRD-202100696

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## TITLE 25. HEALTH SERVICES



## PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

### CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

#### 25 TAC §703.3, §703.26

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts the amendments to 25 TAC §703.3(b)(4) and §703.26(e)(12) without changes to the proposed amendments as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8726); therefore, the rules will not be republished. The amendments relate to Request for Applications content and reimbursement of a grant recipient's professional association dues and fees.

#### Reasoned Justification

The amendment to §703.3(b)(4) clarifies that in the Request for Applications, the Institute may specify the minimum level of effort, if any, that a Principal Investigator, co-Principal Investigator, or other specified key personnel must maintain for the grant project. The change to §703.26(e)(12) clarifies that professional association membership fees or dues for an individual employed by a grant recipient are not allowable for reimbursement. However, membership fees or dues paid by the grant recipient for the entity's membership in business, technical, and professional organizations may be an allowable expense.

#### Summary of Public Comments and Staff Recommendation

CPRIT received no public comments regarding the proposed amendments to §§703.3(b)(4) and 703.26(e)(12).

#### Certification

The Institute hereby certifies that Kristen Pauling Doyle, General Counsel, reviewed the adoption of the rules and found it to be a valid exercise of the agency's legal authority.

The rule changes are adopted under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

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 February 19, 2021.

TRD-202100684

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

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Proposal publication date: December 4, 2020

For further information, please call: (512) 305-8487



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§744.123, 744.501, 744.2001, 744.2003, 744.2005, 744.2007, 744.2105, 744.2401, 744.2409, 744.2411, and 744.2421; new §744.2002 and §744.2403; and the repeal of §§744.2403, 744.2405, 744.2407, 744.2415, and 744.2417 in Title 26, Texas Administrative Code, Chapter 744, Minimum Standards for School-Age and Before or After-School Programs.

The amendments to §§744.123, 744.2003, 744.2105, and 744.2411 are adopted with changes to the proposed text as published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8254). These rules will be republished.

The amendments to §§744.501, 744.2001, 744.2005, 744.2007, 744.2401, 744.2409, and 744.2421; new §744.2002 and §744.2403; and the repeal of §§744.2403, 744.2405, 744.2407, 744.2415, and 744.2417 are adopted without changes to the proposed text as published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8254). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The amendments, new sections, and repeals are necessary to implement Senate Bill (S.B.) 952, 86th Legislature, Regular Session, 2019, which added Subsections 42.042(e-3), (e-4), and (e-5) to the Texas Human Resources Code (HRC). The new Subsections require HHSC Child Care Regulation (CCR) to align the minimum standards for child-care centers and registered child-care homes with standards for physical activity and screen time in *Caring for Our Children* (CFOC), 4th edition, and with the nutrition standards of the federal Child and Adult Care Food Program (CACFP).

CCR is extending these requirements to School-Age and Before and After-School Programs in Chapter 744 and Licensed Homes in Chapter 747, so that the minimum standards for physical activity, nutrition, and screen time are congruent throughout Chapters 744, 746, and 747.

#### COMMENTS

The 31-day comment period ended December 21, 2020. During this period, HHSC received comments regarding the proposed rules from six commenters, including Texans Care for Children, Texas Association for the Education of Young Children, Partnership for Healthy Texas, Texas Pediatric Society, the American Heart Association, and the Texas Medical Association. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Regarding §744.2411, one commenter stated the proposed rule does not support the CACFP requirement that meal substitution for a child with a disability that restricts the child's diet must be supported by written approval from a physician or other health-care professional with prescriptive authority. The commenter stated that there is nothing in the proposed rules that would prevent a health-care professional without prescribing authority from approving a meal substitution for a child with a disability that restricts the child's diet.

Response: HHSC agrees with the comment and is revising the rule to support the CACFP requirement.

Comment: Six commenters generally supported the rules that align the minimum standards with the active play and screen time requirements in CFOC and nutritional requirements with CACFP meal patterns. Commenters stated specific support of increase opportunities for children to engage in active play through newly clarified amounts of active play offered, requirements for planned daily physical activities for children of all ages, reduction in screen time activities, and meal and snack alignment with CACFP meal patterns that provide clearer guidelines and increase flexibility for child-care providers.

Response: HHSC appreciates the support of the rules.

HHSC made minor editorial changes to §744.123 to delete a repeated word and correct punctuation to be consistent with other Licensing chapters.

HHSC also received comments on parallel rules in Chapter 746, Minimum Standards for Child-Care Centers, published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8264). HHSC is amending the proposed text in §744.2003 and §744.2105 to ensure the minimum standards for physical activity, nutrition, and screen time remain congruent throughout Chapters 744, 746, and 747. For a more detailed description of comments received for Chapter 746 and HHSC's response, please see the preamble for Chapter 746, which is published elsewhere in this issue of the *Texas Register*.

## SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

### DIVISION 3. DEFINITIONS

#### 26 TAC §744.123

##### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

*§744.123. What do certain words and terms mean when used in this chapter?*

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or another subchapter or unless the context clearly indicates otherwise. In addition, the following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

- (1) Activity space--An area or room used for children's activities, including areas separate from a group's classroom.
- (2) Administrative and clerical duties--Duties that involve the administration of an operation, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.
- (3) Admission--The process of enrolling a child in an operation. The date of admission is the first day the child is physically present at the operation.
- (4) Adult--A person 18 years old and older.

(5) Age-appropriate--Activities, equipment, materials, curriculum, and environment that are developmentally consistent with the chronological age of the child being served.

(6) Attendance--When referring to a child's attendance, the physical presence of a child at the operation on any given day or at any given time, as distinct from the child's enrollment in the operation.

(7) Before or after-school program--An operation that provides care before and after or before or after the customary school day and during school holidays, for at least two hours a day, three days a week, to children who attend pre-kindergarten through grade six.

(8) Caregiver--A person who is counted in the child to caregiver ratio, whose duties include the supervision, guidance, and protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel). A caregiver is usually an employee, but may also be a substitute, volunteer, or contractor, as outlined in Subchapter D, Division 5 of this chapter (relating to Substitutes, Volunteers, and Contractors).

(9) Certified Child-Care Professional Credential--A credential given by the National Early Childhood Program Accreditation to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(10) Certified lifeguard--A person who has been trained in life saving and water safety by a qualified instructor, from a recognized organization that awards a certificate upon successful completion of the training. The certificate is not required to use the term "lifeguard," but you must be able to document that the certificate represents the type of training described.

(11) CEUs--Continuing education units. A standard unit of measure for adult education and training activities. One CEU equals 10 clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(12) Child Development Associate Credential--A credential given by the Council for Professional Recognition to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(13) Clock hour--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual or individuals, as specified in §744.1319(a) of this chapter (relating to Must the training for my caregivers and the director meet certain criteria?); or

(B) Self-instructional training that was created by an individual or individuals, as specified in §744.1319(a) and (b) of this chapter, or self-study training.

(14) Corporal punishment--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting, slapping, or thumping a child.

(15) Days--Calendar days, unless otherwise stated.

(16) Director--An adult you designate to have daily, on-site responsibility for your operation, including maintaining compliance with the minimum standards, rules, and laws. As this term is used in

this chapter, a director may be an operation director, program director, or site director, unless the context clearly indicates otherwise.

(17) Employee--A person an operation employs full-time or part-time to work for wages, salary, or other compensation. Employees are all of the operation staff, including caregivers, kitchen staff, office staff, maintenance staff, the assistant director, all directors, and the owner, if the owner is ever on site at the operation or transports a child.

(18) Enrollment--The list of names or number of children who have been admitted to attend an operation for any given period of time; the number of children enrolled in an operation may vary from the number of children in attendance on any given day.

(19) Entrap--A component or group of components on equipment that forms angles or openings that may trap a child's head by being too small to allow the child's body to pass through, or large enough for the child's body to pass through but too small to allow the child's head to pass through.

(20) Field trips--Activities conducted away from the operation.

(21) Food service--The preparation or serving of meals or snacks.

(22) Frequent--More than two times in a 30-day period. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(23) Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

(24) Governing body--A group of persons or officers of a corporation or other type of business entity having ultimate authority and responsibility for the operation.

(25) Group activities--Activities that allow children to interact with other children in large or small groups. Group activities include storytelling, finger plays, show and tell, organized games, and singing.

(26) Health-care professional--A licensed physician, a licensed advanced practice registered nurse (APRN), a licensed vocational nurse (LVN), a licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the license. This does not include physicians, nurses, or other medical personnel who are not licensed in the United States or in the country in which the person practices.

(27) Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

(28) High school equivalent--

(A) Documentation of a program recognized by the Texas Education Agency (TEA) or other public educational entity in another state, which offers similar training on reading, writing, and math skills taught at the high school level, such as a General Educational Development (GED) certificate; or

(B) Confirmation that the person received home-schooling that adequately addressed basic competencies such as basic reading, writing, and math skills, which would otherwise have been documented by a high school diploma.

(29) Individual activities--Opportunities for the child to work independently or to be away from the group, but supervised.

(30) Inflatable--An amusement ride or device, consisting of air-filled structures designed for use by children, as specified by the manufacturer, which may include bouncing, climbing, sliding, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(31) Instructor-led training--Training characterized by the communication and interaction that takes place between the student and the instructor. The training must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must communicate with the student in a timely fashion, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this type of training include, classroom training, web-based on-line facilitated learning, video-conferencing, or other group learning experiences.

(32) Janitorial duties--Those duties that involve the cleaning and maintenance of the operation's building, rooms, furniture, etc. Cleaning and maintenance include such duties as cleansing carpets, washing cots, and sweeping, vacuuming, or mopping a restroom or a classroom. Sweeping up after an activity or mopping up a spill in a classroom that is immediately necessary for the children's safety is not considered a janitorial duty.

(33) Local sanitation official--A sanitation official designated by the city or county government.

(34) Multi-site operations--Two or more operations owned by the same person or entity, but the operations have separate permits. These operations may have centralized business functions, record keeping, and leadership.

(35) Natural environment--Settings that are natural or typical for all children of the same age without regard to ability or disability. For example, a natural environment for learning social skills is a play group of peers.

(36) Nighttime care--Care given on a regular or frequent basis to children who are starting or continuing their night sleep, or to children who spend the night or part of the night at the operation between the hours of 9:00 p.m. and 6:00 a.m.

(37) Operation--A person or entity offering a before or after-school program or school-age program that is subject to Licensing's regulation. An operation includes the building and the premises where the program is offered, any person involved in providing the program, and any equipment used in providing the program.

(38) Operation director--A director at your operation who is not supervised by a program director. An operation that has an operation director cannot have a program director or a site director.

(39) Owner--The sole proprietor, partnership, corporation, or other type of business entity who owns the operation.

(40) Permit holder--The owner of the operation that is granted the permit.

(41) Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your:

(A) Operation voluntarily closes;

(B) Operation must close because of an enforcement action in Chapter 745, Subchapter L of this title (relating to Enforcement Actions);

(C) Permit expires according to §745.481 of this title (relating to When does my permit expire?); or

(D) Operation must close because its permit is automatically revoked according to Texas Human Resources Code §§42.048(e), 42.052(j), or 42.054(f).

(42) Physical activity (moderate)--Levels of activity for a child that are at intensities faster than a slow walk, but still allow the child to talk easily. Moderate physical activity increases heart rate and breathing rate.

(43) Physical activity (vigorous)--Rhythmic, repetitive physical movement for a child that uses large muscle groups, causing the child to breathe rapidly and only enabling the child to speak in short phrases. Typically, the child's heart rate is substantially increased and the child is likely to be sweating while engaging in the vigorous physical activity.

(44) Pre-kindergarten age child--A child who is three or four years of age before the beginning of the current school year.

(45) Premises--Includes the operation, any lots on which the operation is located, any outside ground areas, any outside play areas, and the parking lot.

(46) Program--The services and activities provided by an operation.

(47) Program director--A director who oversees your program at multi-site operations and supervises a site director at each operation.

(48) Regular--On a recurring, scheduled basis. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title.

(49) Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(50) Sanitize--The use of a product (usually a disinfecting solution) that is registered by the Environmental Protection Agency (EPA) which substantially reduces germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labelling instructions for sanitizing (paying attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children). For an EPA-registered sanitizing product or disinfecting solution that does not include labelling instructions for sanitizing (a bleach product, for example), you must follow these steps in order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that children are likely to place in their mouths; and

(D) Allowing the surface or item to air-dry.

(51) School-age child--A child who is five years of age and older and is enrolled in or has completed kindergarten.

(52) School-age program--An operation that provides supervision and recreation, skills instruction, or skills training for at least two hours a day and three days a week to children who attend pre-kindergarten through grade six. A school-age program operates before or after the customary school day and may also operate during school holidays, the summer period, or any other time when school is not in session.

(53) Screen time activity--An activity during which a child views media content on a cell or mobile phone, tablet, computer, television, video, film, or DVD. Screen time activities do not include video chatting with a child's family or assistive and adaptive computer technology used by a child with special care needs on a consistent basis.

(54) Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. Lessons or modules commonly include questions with clear right and wrong answers. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(55) Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours of annual training per year.

(56) Site director--A director who has on-site responsibility at a specific operation, but who is supervised by a program director.

(57) Special care needs--A child with special care needs is a child who has a chronic physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the movement of large or small muscles, learning, talking, communicating, self-help, social skills, emotional well-being, seeing, hearing, and breathing.

(58) State or local fire marshal--A fire official designated by the city, county, or state government.

(59) Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(60) Water activities--Related to the use of swimming pools, splashing pools, wading pools, sprinkler play, or other bodies of water.

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. ADMINISTRATION AND COMMUNICATION

### DIVISION 4. OPERATIONAL POLICIES

#### 26 TAC §744.501

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

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## SUBCHAPTER F. DEVELOPMENTAL ACTIVITIES AND EQUIPMENT DIVISION 1. ACTIVITIES AND ACTIVITY PLANS

### 26 TAC §§744.2001 - 744.2003, 744.2005, 744.2007

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

*§744.2003. What are the additional requirements if my operation cares for a child under the age of five?*

If your operation cares for a child under the age of five, you must:

(1) Have written procedures that include the following:

(A) How caregivers will supervise the child while transitioning the child to and from restrooms, indoor and outdoor activity spaces, and spaces shared by other persons outside of the operation;

(B) How caregivers will meet the unique care needs of the child;

(C) How caregivers will meet the outdoor play and physical activity needs in §744.2002(1) and (3) of this division (relating to What additional activities must caregivers provide when a child is in care for more than five consecutive hours in a day?), including:

(i) A minimum of two opportunities for outdoor play, weather permitting, for at least 60 total minutes when a child is in care for eight hours, although you may prorate this requirement if a child is in care for less than eight hours; and

(ii) A minimum of 90 minutes of moderate to vigorous active play when a child is in care for eight hours, although you may prorate this requirement if a child is in care for less than eight hours;

(D) Under what circumstances the child will be mixing with older children in the operation; and

(E) Any modifications to space or equipment that will be made to accommodate the child.

(2) Have written policies that address the promotion of indoor and outdoor physical activity that are consistent with this division. Your policies must include:

(A) The benefits of physical activity and outdoor play;

(B) The duration of physical activity at your operation, both indoor and outdoor;

(C) The type of physical activity (structured and unstructured) that children may engage in at your operation;

(D) Each setting in which your physical activity program will take place;

(E) The recommended clothing and footwear that will allow a child to participate freely and safely in physical activities; and

(F) A plan to ensure physical activity occurs on days when extreme weather conditions prohibit or limit outdoor play.

(3) Follow the policies and procedures and make the policies and procedures available for review by:

(A) Licensing upon request during your hours of operation; and

(B) Parents at enrollment and as needed thereafter.

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## SUBCHAPTER G. DISCIPLINE AND GUIDANCE

### 26 TAC §744.2105

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code

§42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

§744.2105. *What types of discipline and guidance or punishment are prohibited?*

There must be no harsh, cruel, or unusual treatment of any child. The following types of discipline and guidance are prohibited:

- (1) Corporal punishment or threats of corporal punishment;
- (2) Punishment associated with food, naps, or toilet training;
- (3) Pinching, shaking, or biting a child;
- (4) Hitting a child with a hand or instrument;
- (5) Putting anything in or on a child's mouth;
- (6) Humiliating, ridiculing, rejecting, or yelling at a child;
- (7) Subjecting a child to harsh, abusive, or profane language;
- (8) Placing a child in a locked or dark room, bathroom, or closet;
- (9) Withholding active play or keeping a child inside as a consequence for behavior, unless the child is exhibiting behavior during active play that requires a brief supervised separation or time out that is consistent with §744.2103(b)(4) of this subchapter (relating to What methods of discipline and guidance may a caregiver use?); and
- (10) Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age.

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## SUBCHAPTER J. NUTRITION AND FOOD SERVICE

**26 TAC §§744.2401, 744.2403, 744.2409, 744.2411, 744.2421**

### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

§744.2411. *What are the requirements for a child who requires a special diet or does not want to eat foods the operation serves?*

(a) To serve a child a therapeutic or special diet, you must:

(1) Have written approval from:

(A) A physician or health-care professional with prescriptive authority if the diet relates to a disability that restricts the child's diet; or

(B) A health-care professional or a registered or licensed dietician if the diet does not relate to a disability that restricts the child's diet;

(2) Maintain the written approval in the child's record; and

(3) Give the information to all employees preparing and serving food.

(b) You must discuss recurring eating problems with the child's parent.

(c) You may encourage but must not force children to eat.

(d) You must not serve nutrient concentrates and supplements such as protein powders, liquid protein, vitamins, minerals, and other nonfood substances without written instructions as required in subsection (a)(1) of this section.

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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**26 TAC §§744.2403, 744.2405, 744.2407, 744.2415, 744.2417**

### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

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## CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§746.123, 746.501, 746.2203, 746.2205, 746.2207, 746.2417, 746.2507, 746.2607, 746.2707, 746.2805, 746.3209, 746.3301, 746.3309, 746.3311, and 746.3319; new §746.2206 and §746.3303; and the repeal of §§746.3303, 746.3305, 746.3307, 746.3315 and 746.3316 in Title 26, Texas Administrative Code, Chapter 746, Minimum Standards for Child Care Centers.

The amendments to §§746.123, 746.501, 746.2707, 746.2805, and 746.3311 are adopted with changes to the proposed text as published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8261). These rules will be republished.

The amendments to §§746.2203, 746.2205, 746.2207, 746.2417, 746.2507, 746.2607, 746.3209, 746.3301, 746.3309, and 746.3319; new §746.2206 and §746.3303; and the repeal of §§746.3303, 746.3305, 746.3307, 746.3315 and 746.3316 are adopted without changes to the proposed text as published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8261). These rules will not be republished.

### BACKGROUND AND JUSTIFICATION

The amendments, new sections, and repeals are necessary to implement Senate Bill (S.B.) 952, 86th Legislature, Regular Session, 2019, which added Subsections 42.042(e-3), (e-4), and (e-5) to the Texas Human Resources Code (HRC). The new Subsections require HHSC Child Care Regulation (CCR) to align the minimum standards for child-care centers and registered child-care homes with standards for physical activity and screen time in *Caring for Our Children* (CFOC), 4th edition, and with the nutrition standards of the federal Child and Adult Care Food Program (CACFP).

### COMMENTS

The 31-day comment period ended December 21, 2020. During this period, HHSC received comments regarding the proposed rules from 16 commenters, including Stretch-n-Grow of McKinney, Kiddie Academy of Missouri City, Christian Preschool Centers, Inc., Crème de la Crème, Education Connection, Austin Community College Children's Lab School, Kyle's Bright Beginnings, Foundations Academy, Kids University, Texans Care for Children, Texas Association for the Education of Young Children, Partnership for Healthy Texas, Texas Pediatric Society, the American Heart Association, and the Texas Medical Association. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Regarding §746.123(41) and (53), one commenter stated the rules are confusing and requested "current school year" be more clearly defined as a center may serve several school districts with varying start dates.

Response: HHSC disagrees with the comment and declines to revise the rule. However, HHSC will add information to a Helpful Information box, following the rule in the Minimum Standards publications on the HHSC provider webpage, to clarify that the beginning of the current school year is based on the start date of the school district the child attends.

Comment: Regarding §746.123(48), one commenter requested HHSC clarify the definition of "media content" within the definition of screen time activity to eliminate potential ambiguity in regulating the standard.

Response: HHSC disagrees with the comment and declines to revise the rule. The definition of screen time activity must be aligned with the CFOC definition. However, HHSC will clarify the term "media content" by adding examples to a Helpful Information box, following the rule in the Minimum Standards publications on the HHSC provider webpage.

Comment: Regarding §746.501(18)(A), one commenter stated that child-care operators are unqualified to discuss the benefits of physical activity as required by the rule. The commenter also stated that describing benefits of physical activity is unnecessary to ensure proper care of children.

Response: HHSC disagrees with the comment and declines to revise the rule. Specific operational policies concerning physical activities are required in the CFOC standards. To aid child-care center staff in writing their policies, HHSC will provide additional resources regarding physical activity by adding links to the CFOC standards and the CCR Technical Assistance Library in a Helpful Information box, following the rule in the Minimum Standards publications on the HHSC provider webpage.

Comment: Regarding §746.501(18)(E), one commenter recommended HHSC revise the language in the rule that requires an operation to include in its operational policies the recommended clothing and footwear a child requires for active play. The commenter recommended HHSC reduce ambiguity by clarifying what is recommended versus what is required.

Response: HHSC agrees with the comment and is revising the rule to clarify the operation's policy must include the recommended clothing and footwear that will allow a child to participate freely and safely in physical activities.

Comment: Regarding §746.2206(1)(A), one commenter requested HHSC review this requirement--due to logistical, staffing, equipment, and financial concerns--for taking non-walking infants under 12 months of age outside. The commenter recommended adding or removing some of the mandates of the policy and requiring that child-care center employees not carry infants outside of the classroom.

Response: HHSC disagrees with the comment and declines to revise the rule. The recommendation is not aligned with CFOC standards. Additionally, the rule includes language that allows for flexibility in addressing the outdoor activity needs of infants birth through 12 months of age.

Comment: Regarding §746.2206(1)(B), one commenter stated that subparagraph (B) does not specify that outdoor play occur, weather permitting, as it does paragraph (1) of the rule.

Response: HHSC disagrees with the comment and declines to revise the rule. The clause that specifies outdoor play occur, weather permitting, in paragraph (1) applies to both subparagraph (1)(A) and (1)(B).

Comment: Regarding §746.2206(2)(B), one commenter issued a statement of support for the rule regarding the minimum amount of time for moderate and vigorous active play for pre-kindergarten age children.

Response: HHSC appreciates the support of the rule.

Comment: Regarding §746.2207(c)(3), one commenter agreed with reducing the regular amount of screen time from two hours to one hour per day, but the commenter requested an allowance for days when inclement weather reduces outside time.

Response: HHSC disagrees with the comment and declines to revise the rule. The recommendation is not aligned with CFOC standards. Additionally, new rules for physical activity require centers to meet activity requirements regardless of weather. Extra time indoors must be utilized to meet the active play requirements that typically would be met outside. Screen time activities do not provide the level of child and caregiver engagement needed to fulfill that requirement.

Comment: Regarding §746.2207(c)(3) and (c)(5), one commenter stated the rules prohibit children from watching entire movies on special occasions, particularly during field trips to movie theatres. The commenter further noted that movies include advertisements for upcoming movies, which would violate the proposed rules.

Response: HHSC disagrees with the comment and declines to revise the rule. The rule applies to activities at the child-care center only. A Helpful Information box, following the proposed rule in the Minimum Standards publications on the HHSC provider webpage, contains information that further clarifies that the rule does not apply to field trips.

Comment: Regarding §746.2207(d), one commenter requested HHSC clarify the term "homework" as a child-care center may use a smart board to post daily schedules, have children sign in, etc. The commenter recommended HHSC revise the rule to read "a school-age child may use screen time without restriction" or "a school-age child may use screen time for homework or activities other than videos."

Response: HHSC disagrees with the comment and declines to revise the rule. The recommendation is not aligned with CFOC standards. However, HHSC will clarify that daily sign-in, rosters, or schedules displayed on a smart board are not examples of media content subject to screen time limitations in a Helpful Information box, following the rule that defines screen time, §746.123(48), in the Minimum Standards publications on the HHSC provider webpage.

Comment: Regarding §746.2417(2)(B), two commenters requested an infant's digestion be included as part of the eating process to allow an infant to remain upright in a restrictive device for 30 minutes after eating to mitigate side effects from gastroesophageal reflux.

Response: HHSC disagrees with the comment and declines to revise the rule. The request is not aligned with the CFOC standards. Additionally, current minimum standards allow child-care centers to accommodate any special health needs indicated on infant feeding instructions, the center's enrollment form, or the child's health statement.

Comment: Regarding §746.2417(2)(B), one commenter stated that 15 minutes is not enough time to allow an infant to play in a restrictive device, particularly when the infant is content and enjoying the device. The commenter also stated a caregiver may

take longer than 15 minutes to complete tasks with other infants in the room, thus resulting in an infant remaining in the device beyond the 15-minute time limit.

Response: HHSC disagrees with the comment and declines to revise the rule. The recommendation is not aligned with CFOC standards.

Comment: Regarding §746.2707(4), one commenter stated using tape recorders as an example is outdated and recommended HHSC replace it with "cd players, mp3 players, streaming audio devices."

Response: HHSC agrees that the example should be revised but disagrees with the examples the commenter recommended. This rule is about promoting small muscle development in school-age children and any examples must support development in that specific area. HHSC is revising the rule to provide new examples.

Comment: Regarding §746.2805(9), one commenter stated that allowing children to play outside following poor behavior in the classroom reinforces negative behavior and contradicts current best practices regarding positive reinforcement. The commenter recommended adding language to allow the child a choice to remain inside in a calming corner or safe space.

Response: HHSC disagrees with the comment but is revising the rule to clarify the appropriate use of time out during active play. Preventing a child from engaging in active play outside as a delayed consequence for poor behavior inside, as the commenter suggested, is not aligned with the CFOC standards. HHSC is further clarifying the rule by adding examples to illustrate the appropriate use of time out during active play to the Helpful Information box, following the proposed rule in the Minimum Standards publications on the HHSC provider webpage.

Comment: Regarding §746.2805(9), three commenters stated that a caregiver should not withhold outdoor active play due to classroom behavior but should have the ability to address poor behavior during indoor or outdoor active play with a short time away from the group as an immediate consequence.

Response: HHSC agrees with the comment is revising the rule to clarify the appropriate use of time out during active play. HHSC is further clarifying the rule by adding examples to illustrate the appropriate use of time out during active play to the Helpful Information box, following the proposed rule in the Minimum Standards publications on the HHSC provider webpage.

Comment: Regarding §746.3301(b), two commenters expressed concerns with the fiscal impact of following the CACFP meal patterns. One commenter stated the requirement to follow CACFP requirements is particularly hard for centers that are ineligible for CACFP reimbursement because they do not enroll children who receive subsidies from the Texas Workforce Commission. The commenter further stated the required food quantities are costly and wasteful and requested HHSC address the cost to providers. The second commenter also expressed concerns regarding the fiscal impact due to increased food quantities and recommended HHSC restore the original language of the rule that allowed child-care centers to follow CACFP meal patterns or Licensing meal requirements.

Response: HHSC disagrees with the comment and declines to revise the rule. HHSC is statutorily required to align the minimum standards with the CACFP meal patterns. HHSC determined these rules have no fiscal impact on child-care centers based on a survey completed by the Texas Department of Agriculture that



determined the CACFP meal pattern changes are cost neutral. Moreover, any child-care center may participate in CACFP for reimbursement, as participation is not contingent on enrollment in a separate state or federal program.

Comment: Regarding §746.3301(e), one commenter expressed concern with the financial impact of allowing second servings of food to all children in care.

Response: HHSC disagrees with the comment and declines to revise the rule. This rule does not impose a new requirement on child-care centers as it is an existing rule that was moved from a repealed rule in this packet. There is no new financial impact to child-care centers.

Comment: Regarding §746.3311, one commenter stated the proposed rule does not support the CACFP requirement that meal substitution for a child with a disability that restricts the child's diet must be supported by written approval from a physician or other health-care professional with prescriptive authority. The commenter explained that there is nothing in the proposed rules that would prevent a health-care professional without prescribing authority from approving a meal substitution for a child with a disability that restricts the child's diet.

Response: HHSC agrees with the comment and is revising the rule to support the CACFP requirement.

Comment: Regarding the phrase "weather permitting," as it appears in several rules regarding physical activity, one commenter requested a better definition of the phrase due to concerns some child-care centers will not take children outside when the weather is less than ideal.

Response: HHSC disagrees with the comment and declines to revise the rules. The language in the rules is aligned with CFOC standards. Additionally, child-care centers continue to have a responsibility to establish policies that support the minimum standards and protect the safety of children in care; this includes making decisions regarding inclement weather and assessing any risk, or lack thereof, to enrolled children. For these reasons, HHSC does not find it necessary to expand upon the specific weather conditions that would prohibit outdoor play.

Comment: Six commenters generally supported the rules that align the minimum standards with the active play and screen time requirements in CFOC and nutritional requirements with CACFP nutrition standards. Commenters stated specific support of increase opportunities for children to engage in active play through newly clarified amounts of active play offered, requirements for planned daily physical activities for children of all ages, limiting infant time in restrictive equipment to 15 minutes, requirements for caregiver directed tummy time, reduction in screen time activities, and meal and snack alignment with CACFP meal patterns that provide clearer guidelines and increase flexibility for child-care providers.

Response: HHSC appreciates the support of the rules.

HHSC made minor editorial changes to §746.123 to delete a repeated word and remove the word "or" from a list.

## SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

### DIVISION 3. DEFINITIONS

#### 26 TAC §746.123

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

#### §746.123. *What do certain words and terms mean when used in this chapter?*

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or another subchapter or unless the context clearly indicates otherwise. In addition, the following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

- (1) Activity space--An area or room used for children's activities, including areas separate from a group's classroom.
- (2) Administrative and clerical duties--Duties that involve the operation of a child-care center, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.
- (3) Admission--The process of enrolling a child in a child-care center. The date of admission is the first day the child is physically present in the center.
- (4) Adult--A person 18 years old and older.
- (5) Age-appropriate--Activities, equipment, materials, curriculum, and environment that are developmentally consistent with the chronological age of the child being served.
- (6) Alternate care program--A program in which no child is in care for more than five consecutive days, and no child is in care for more than 15 days in one calendar month, regardless of the duration of each stay.
- (7) Attendance--When referring to a child's attendance, the physical presence of a child at the child-care center's program on any given day or at any given time, as distinct from the child's enrollment in the child-care center.
- (8) Bouncer seat--A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement, or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.
- (9) Caregiver--A person who is counted in the child to caregiver ratio, whose duties include the supervision, guidance, and protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel). A caregiver is usually an employee, but may also be a substitute, volunteer, or contractor, as outlined in Subchapter D, Division 5 of this chapter.
- (10) Certified Child-Care Professional Credential--A credential given by the National Early Childhood Program Accreditation to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.
- (11) Certified lifeguard--A person who has been trained in life saving and water safety by a qualified instructor, from a recognized organization that awards a certificate upon successful completion of the training. The certificate is not required to use the term "lifeguard," but

the permit holder must be able to document that the certificate represents the type of training described.

(12) CEUs--Continuing education units. A standard unit of measure for adult education and training activities. One CEU equals 10 clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(13) Child--An infant, a toddler, a pre-kindergarten age child, or a school-age child.

(14) Child-care center--A child-care facility that is licensed to care for seven or more children for less than 24 hours per day, at a location other than the permit holder's home. If you were licensed before September 1, 2003, the location of the center could be in the permit holder's home.

(15) Child-care program--The services and activities provided by a child-care center.

(16) Child Development Associate Credential--A credential given by the Council for Professional Recognition to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(17) Clock hour--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual or individuals as specified in §746.1317(a) of this chapter (relating to Must the training for my caregivers and the director meet certain criteria?); or

(B) Self-instructional training that was created by an individual or individuals, as specified in §746.1317(a) and (b) of this chapter, or self-study training.

(18) Corporal punishment--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting, slapping, or thumping a child.

(19) Days--Calendar days, unless otherwise stated.

(20) Employee--A person a child-care center employs full-time or part-time to work for wages, salary, or other compensation. Employees are all of the child-care center staff, including caregivers, kitchen staff, office staff, maintenance staff, the assistant director, the director, and the owner, if the owner is ever on site at the center or transports a child.

(21) Enrollment--The list of names or number of children who have been admitted to attend a child-care center for any given period of time; the number of children enrolled in a child-care center may vary from the number of children in attendance on any given day.

(22) Entrap--A component or group of components on equipment that forms angles or openings that may trap a child's head by being too small to allow the child's body to pass through, or large enough for the child's body to pass through but too small to allow the child's head to pass through.

(23) Field trips--Activities conducted away from the child-care center.

(24) Food service--The preparation or serving of meals or snacks.

(25) Frequent--More than two times in a 30-day period. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(26) Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

(27) Group activities--Activities that allow children to interact with other children in large or small groups. Group activities include storytelling, finger plays, show and tell, organized games, and singing.

(28) Health-care professional--A licensed physician, a licensed advanced practice registered nurse (APRN), a licensed vocational nurse (LVN), a licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the license. This does not include physicians, nurses, or other medical personnel who are not licensed in the United States or in the country in which the person practices.

(29) Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

(30) High school equivalent--

(A) Documentation of a program recognized by the Texas Education Agency (TEA) or other public educational entity in another state, which offers similar training on reading, writing, and math skills taught at the high school level, such as a General Educational Development (GED) certificate; or

(B) Confirmation that the person received homeschooling that adequately addressed basic competencies such as basic reading, writing, and math skills, which would otherwise have been documented by a high school diploma.

(31) Individual activities--Opportunities for the child to work independently or to be away from the group, but supervised.

(32) Infant--A child from birth through 17 months.

(33) Inflatable--An amusement ride or device, consisting of air-filled structures designed for use by children, as specified by the manufacturer, which may include bouncing, climbing, sliding, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(34) Instructor-led training--Training characterized by the communication and interaction that takes place between the student and the instructor. The training must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must communicate with the student in a timely fashion, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this type of training include classroom training, web-based on-line facilitated learning, video-conferencing, or other group learning experiences.

(35) Janitorial duties--Those duties that involve the cleaning and maintenance of the child-care center building, rooms, furniture, etc. Cleaning and maintenance include such duties as cleansing carpets, washing cots, and sweeping, vacuuming, or mopping a restroom or a classroom. Sweeping up after an activity or mopping up a spill in

a classroom that is immediately necessary for the children's safety is not considered a janitorial duty.

(36) Local sanitation official--A sanitation official designated by the city or county government.

(37) Natural environment--Settings that are natural or typical for all children of the same age without regard to ability or disability. For example, a natural environment for learning social skills is a play group of peers.

(38) Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your center voluntarily closes or must close because of an enforcement action in Chapter 745, Subchapter L of this title (relating to Enforcement Actions).

(39) Physical activity (moderate)--Levels of activity for a child that are at intensities faster than a slow walk, but still allow the child to talk easily. Moderate physical activity increases the child's heart rate and breathing rate.

(40) Physical activity (vigorous)--Rhythmic, repetitive physical movement for a child that uses large muscle groups, causing the child to breathe rapidly and only enabling the child to speak in short phrases. Typically, the child's heart rate is substantially increased, and the child is likely to be sweating while engaging in vigorous physical activity.

(41) Pre-kindergarten age child--A child who is three or four years of age before the beginning of the current school year.

(42) Premises--Includes the child-care center, any lots on which the center is located, any outside ground areas, any outside play areas, and the parking lot.

(43) Regular--On a recurring, scheduled basis. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title.

(44) Restrictive device--Equipment that places the body of a child in a position that may restrict airflow or cause strangulation; usually, the child is placed in a semi-seated position. Examples of restrictive devices are car seats, swings, bouncy seats, and high chairs.

(45) Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(46) Sanitize--The use of a product (usually a disinfecting solution) that is registered by the Environmental Protection Agency (EPA) which substantially reduces germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labeling instructions for sanitizing (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). For an EPA-registered sanitizing product or disinfecting solution that does not include labelling instructions for sanitizing (a bleach product, for example), you must follow these steps in order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that children are likely to place in their mouths; and

(D) Allowing the surface or item to air-dry.

(47) School-age child--A child who is five years of age and older and is enrolled in or has completed kindergarten.

(48) Screen time activity--An activity during which a child views media content on a cell or mobile phone, tablet, computer, television, video, film, or DVD. Screen time activities do not include video chatting with a child's family or assistive and adaptive computer technology used by a child with special care needs on a consistent basis.

(49) Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. Lessons or modules commonly include questions with clear right and wrong answers. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(50) Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours of annual training per year.

(51) Special care needs--A child with special care needs is a child who has a chronic physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the movement of large or small muscles, learning, talking, communicating, self-help, social skills, emotional well-being, seeing, hearing, and breathing.

(52) State or local fire marshal--A fire official designated by the city, county, or state government.

(53) Toddler--A child from 18 months through 35 months.

(54) Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(55) Water activities--Related to the use of swimming pools, splashing pools, wading pools, sprinkler play, or other bodies of water.

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. ADMINISTRATION AND COMMUNICATION

### DIVISION 4. OPERATIONAL POLICIES

#### 26 TAC §746.501

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of

services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

§746.501. *What written operational policies must I have?*

(a) You must develop written operational policies and procedures that at a minimum address each of the following:

- (1) Hours, days, and months of operation;
- (2) Procedures for the release of children;
- (3) Illness and exclusion criteria;
- (4) Procedures for dispensing medication or a statement that medication is not dispensed;
- (5) Procedures for handling medical emergencies;
- (6) Procedures for parental notifications;
- (7) Discipline and guidance that is consistent with Subchapter L of this chapter (relating to Discipline and Guidance). A copy of Subchapter L may be used for your discipline and guidance policy;
- (8) Suspension and expulsion of children;
- (9) Safe sleep policy for infants from birth through 12 months old that is consistent with the rules in Subchapter H of this chapter (relating to Basic Requirements for Infants) that relate to sleep requirements and restrictions, including sleep positioning, and crib requirements and restrictions, including mattresses, bedding, blankets, toys, and restrictive devices;
- (10) Meals and food service practices;
- (11) Immunization requirements for children, including tuberculosis screening and testing if required by your regional Texas Department of State Health Services or local health authority;
- (12) Hearing and vision screening requirements;
- (13) Enrollment procedures, including how and when parents will be notified of policy changes;
- (14) Transportation, if applicable;
- (15) Water activities, if applicable;
- (16) Field trips, if applicable;
- (17) Animals, if applicable;
- (18) Promotion of indoor and outdoor physical activity that is consistent with Subchapter F of this chapter (relating to Developmental Activities and Activity Plan); your policies must include:
  - (A) The benefits of physical activity and outdoor play;
  - (B) The duration of physical activity at your operation, both indoor and outdoor;
  - (C) The type of physical activity (structured and unstructured) that children may engage in at your operation;
  - (D) Each setting in which your physical activity program will take place;
  - (E) The recommended clothing and footwear that will allow a child to participate freely and safely in physical activities; and
  - (F) A plan to ensure physical activity occurs on days when extreme weather conditions prohibit or limit outdoor play.

(19) Procedures for providing and applying, as needed, insect repellent and sunscreen, including what types will be used, if applicable;

(20) Procedures for parents to review and discuss with the child-care center director any questions or concerns about the policies and procedures of the child-care center;

(21) Procedures for parents to participate in the child-care center's operation and activities;

(22) Procedures for parents to review a copy of the child-care center's most recent Licensing inspection report and how the parent may access the minimum standards online;

(23) Instructions on how a parent may contact the local Licensing office, access the Texas Abuse and Neglect Hotline, and access the HHSC website;

(24) Your emergency preparedness plan;

(25) Your provisions to provide a comfortable place with an adult sized seat in your center or within a classroom that enables a mother to breastfeed her child. In addition, your policies must inform parents that they have the right to breastfeed or provide breast milk for their child while in care;

(26) Preventing and responding to abuse and neglect of children, including:

(A) Required annual training for employees;

(B) Methods for increasing employee and parent awareness of issues regarding child abuse and neglect, including warning signs that a child may be a victim of abuse or neglect and factors indicating a child is at risk for abuse or neglect;

(C) Methods for increasing employee and parent awareness of prevention techniques for child abuse and neglect;

(D) Strategies for coordination between the center and appropriate community organizations; and

(E) Actions that the parent of a child who is a victim of abuse or neglect should take to obtain assistance and intervention, including procedures for reporting child abuse or neglect;

(27) Procedures for conducting health checks, if applicable; and

(28) Information on vaccine-preventable diseases for employees, unless your center is in the home of the permit holder. The policy must address the requirements outlined in §746.3611 of this chapter (relating to What must a policy for protecting children from vaccine-preventable diseases include?).

(b) You must also inform the parents that:

(1) They may visit the child-care center at any time during your hours of operation to observe their child, the program activities, the building, the premises, and the equipment without having to secure prior approval; and

(2) Under the Texas Penal Code any area within 1,000 feet of a child-care center is a gang-free zone, where criminal offenses related to organized criminal activity are subject to a harsher penalty. You may inform the parents by:

(A) Providing this information in the operational policies;

(B) Distributing the information in writing to the parents; or

(C) Informing the parents verbally as part of an individual or group parent orientation.

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. DEVELOPMENTAL ACTIVITIES AND ACTIVITY PLAN

**26 TAC §§746.2203, 746.2205 - 746.2207**

### STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

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## SUBCHAPTER H. BASIC CARE REQUIREMENTS FOR INFANTS

**26 TAC §746.2417**

### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory

functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

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## SUBCHAPTER I. BASIC CARE REQUIREMENTS FOR TODDLERS

**26 TAC §746.2507**

### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

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## SUBCHAPTER J. BASIC CARE REQUIREMENTS FOR PRE-KINDERGARTEN AGE CHILDREN

**26 TAC §746.2607**

### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

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## SUBCHAPTER K. BASIC CARE REQUIREMENTS FOR SCHOOL-AGE CHILDREN

### 26 TAC §746.2707

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

§746.2707. *What activities must I provide for a school-age child?*

Daily activities for a school-age child must include at least the following:

- (1) Study time for those children who choose to work on homework;
- (2) Opportunities for outdoor play, weather permitting;
- (3) Opportunities for thinking skills and sensory development. Examples of age-appropriate equipment or activities include sand and water play; construction materials and blocks; puzzles with 50 or more pieces; pattern-making materials, such as wood, paper, plastic, beads, ceramic tiles, cloth, or cardboard; games that contain rules and require some skill or strategy; specific skill development materials, such as rulers, tape measures, telescopes, weather observation equipment, models of the solar system, and microscopes; books; and magazines;
- (4) Opportunities for small-muscle development. Examples of age-appropriate equipment or activities include art and craft materials, such as paints, markers, colored pencils, crayons, clay, weaving, or braiding materials; music and musical instruments of all types; and puzzles or interlocking building blocks;

(5) Opportunities for large-muscle development. Examples of age-appropriate equipment or activities include balls and sports equipment, such as kick balls, baseballs, soccer balls, basketballs, skates, and horseshoes; riding equipment, such as kick scooters or skateboards, with kneepads, elbow pads, and helmets; and outdoor and gym equipment, such as slides, swings, climbing apparatus, and upper-body equipment;

(6) Opportunities for active play both indoors and outdoors. Examples of age-appropriate equipment or activities include active games such as tag and Simon Says, dancing and creative movement to music and singing, simple games and dramatic or imaginary play that encourages running, stretching, climbing, and walking; and

(7) Opportunities for social and emotional development. Examples of age-appropriate equipment or activities include dolls with detailed, realistic accessories; role-play materials, including real equipment for library, hospital, post office, costumes, makeup and disguise materials; puppets and puppet show equipment; transportation toys, such as small vehicles or models; play and art materials; nature materials; and human and animal figurines.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER L. DISCIPLINE AND GUIDANCE

### 26 TAC §746.2805

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

§746.2805. *What types of discipline and guidance or punishment are prohibited?*

There must be no harsh, cruel, or unusual treatment of any child. The following types of discipline and guidance are prohibited:

- (1) Corporal punishment or threats of corporal punishment;
- (2) Punishment associated with food, naps, or toilet training;
- (3) Pinching, shaking, or biting a child;
- (4) Hitting a child with a hand or instrument;

- (5) Putting anything in or on a child's mouth;
- (6) Humiliating, ridiculing, rejecting, or yelling at a child;
- (7) Subjecting a child to harsh, abusive, or profane language;
- (8) Placing a child in a locked or dark room, bathroom, or closet;
- (9) Withholding active play or keeping a child inside as a consequence for behavior, unless the child is exhibiting behavior during active play that requires a brief supervised separation or time out that is consistent with §746.2803(4)(D) of this subchapter (relating to What methods of discipline and guidance may a caregiver use?); and
- (10) Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age, including requiring a child to remain in a restrictive device.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER P. NIGHTTIME CARE

### 26 TAC §746.3209

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources 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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## SUBCHAPTER Q. NUTRITION AND FOOD SERVICE

### 26 TAC §§746.3301, 746.3303, 746.3309, 746.3311, 746.3319

#### STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

§746.3311. *What are the requirements for a child who requires a special diet or does not want to eat foods that the center serves?*

(a) To serve a child a therapeutic or special diet, you must:

(1) Have written approval from:

(A) A physician or health-care professional with prescriptive authority if the diet relates to a disability that restricts the child's diet; or

(B) A health-care professional or a registered or licensed dietician if the diet does not relate to a disability that restricts the child's diet;

(2) Maintain the written approval in the child's record; and

(3) Give the information to all employees preparing and serving food.

(b) You must discuss recurring eating problems with the child's parent.

(c) You may encourage but must not force children to eat.

(d) You must not serve nutrient concentrates and supplements such as protein powders, liquid protein, vitamins, minerals, and other nonfood substances without written instructions as required in paragraph (a)(1) of this section.

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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### 26 TAC §§746.3303, 746.3305, 746.3307, 746.3315, 746.3316

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of

services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

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## CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§747.123, 747.501, 747.2103, 747.2105, 747.2317, 747.2407, 747.2507, 747.2607, 747.2705, 747.3009, 747.3101, 747.3109, 747.3111, and 747.3119; new §§747.2102, 747.2104, and 747.3103; and the repeal of §§747.3103, 747.3105, 747.3107, 747.3115, and 747.3116 in Title 26, Texas Administrative Code, Chapter 747, Minimum Standards for Child-Care Homes.

The amendments to §§747.123, 747.501, 747.2607, 747.2705, and 747.3111 are adopted with changes to the proposed text as published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8276). These rules will be republished.

The amendments to §§747.2103, 747.2105, 747.2317, 747.2407, 747.2507, 747.3009, 747.3101, 747.3109, and 747.3119; new §§747.2102, 747.2104, and 747.3103; and the repeal of §§747.3103, 747.3105, 747.3107, 747.3115 and 747.3116 are adopted without changes to the proposed text as published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8279). These rules will not be republished.

### BACKGROUND AND JUSTIFICATION

The amendments, new sections, and repeals are necessary to implement Senate Bill (S.B.) 952, 86th Legislature, Regular Session, 2019, which added Subsections 42.042(e-3), (e-4), and (e-5) to the Texas Human Resources Code (HRC). The new Subsections require HHSC Child Care Regulation (CCR) to align the minimum standards for child-care centers and registered child-care homes with standards for physical activity and screen time in *Caring for Our Children* (CFOC), 4th edition, and with the nutrition standards of the federal Child and Adult Care Food Program (CACFP).

CCR is extending these requirements to School-Age and Before and After-School Programs in Chapter 744 and Licensed Homes in Chapter 747, so that the minimum standards for physical activity, nutrition, and screen time are congruent throughout Chapters 744, 746, and 747.

### COMMENTS

The 31-day comment period ended December 21, 2020. During this period, HHSC received comments regarding the proposed rules from six commenters, including Texans Care for Children, Texas Association for the Education of Young Children, Partnership for Healthy Texas, Texas Pediatric Society, the American Heart Association, and the Texas Medical Association. A summary of comments relating to the rules and HHSC's responses follows.

**Comment:** Regarding §747.3111, one commenter stated the proposed rule does not support the CACFP requirement that meal substitution for a child with a disability that restricts the child's diet must be supported by written approval from a physician or other health-care professional with prescriptive authority. The commenter stated that there is nothing in the proposed rules that would prevent a health-care professional without prescribing authority from approving a meal substitution for a child with a disability that restricts the child's diet.

**Response:** HHSC agrees with the comment and is revising the rule to support the CACFP requirement.

**Comment:** Six commenters generally supported the rules that align the minimum standards with the active play and screen time requirements in CFOC and nutritional requirements with CACFP meal patterns. Commenters stated specific support of increased opportunities for children to engage in active play through newly clarified amounts of active play offered, requirements for planned daily physical activities for children of all ages, limiting infant time in restrictive equipment to 15 minutes, requirements for caregiver directed tummy time, reduction in screen time activities, and meal and snack alignment with CACFP meal patterns that provide clearer guidelines and increase flexibility for child-care providers.

**Response:** HHSC appreciates the support of the rules.

HHSC made minor editorial changes to §747.123 to delete a repeated word and remove the word "or" from a list.

HHSC also received comments on parallel rules in Chapter 746, Minimum Standards for Child-Care Centers, published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8264). HHSC is amending the proposed text in §§747.501, 747.2607, and 747.2705 to ensure the minimum standards for physical activity, nutrition, and screen time remain congruent throughout Chapters 744, 746, and 747. For a more detailed description of comments received for Chapter 746 and HHSC's response, please see the preamble for Chapter 746, which is published elsewhere in this issue of the *Texas Register*.

## SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

### DIVISION 3. DEFINITIONS

#### 26 TAC §747.123

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code



§42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

§747.123. *What do certain words and terms mean when used in this chapter?*

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or another subchapter or unless the context clearly indicates otherwise. In addition, the following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

- (1) Activity space--An area or room used for children's activities.
- (2) Administrative and clerical duties--Duties that involve the operation of a child-care home, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.
- (3) Admission--The process of enrolling a child in a child-care home. The date of admission is the first day the child is physically present in the home.
- (4) Adult--A person 18 years old and older.
- (5) After-school hours--Hours before and after school, and days when school is not in session, such as school holidays, summer vacations, and teacher in-service days.
- (6) Age-appropriate--Activities, equipment, materials, curriculum, and environment that are developmentally consistent with the chronological age of the child being served.
- (7) Attendance--When referring to a child's attendance, the physical presence of a child at the child-care home on any given day or at any given time, as distinct from the child's enrollment in the child-care home.
- (8) Bouncer seat--A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement, or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.
- (9) Caregiver--A person who is counted in the child to caregiver ratio, whose duties include the supervision, guidance, and protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel).
- (10) Certified Child-Care Professional Credential--A credential given by the National Early Childhood Program Accreditation to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.
- (11) Certified lifeguard--A person who has been trained in life saving and water safety by a qualified instructor, from a recognized organization that awards a certificate upon successful completion of the training. The certificate is not required to use the term "lifeguard," but you must be able to document that the certificate represents the type of training described.
- (12) CEUs--Continuing education units. A standard unit of measure for adult education and training activities. One CEU equals 10 clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(13) Child--An infant, a toddler, a pre-kindergarten age child, or a school-age child.

(14) Child-care home--A registered or licensed child-care home, as specified in §747.113 of this chapter (relating to What is a registered child-care home?) or §747.115 of this chapter (relating to What is a licensed child-care home?). This term includes the program, home, grounds, furnishings, and equipment.

(15) Child-care program--The services and activities provided by a child-care home.

(16) Child Development Associate Credential--A credential given by the Council for Professional Recognition to a person working directly with children. The credential is based on assessed competence in several areas of child care and child development.

(17) Clock hour--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual or individuals as specified in §747.1315(a) of this chapter (relating to Must child-care training meet certain criteria?); or

(B) Self-instructional training that was created by an individual or individuals, as specified in §747.1315(a) and (b) of this chapter, or self-study training.

(18) Corporal punishment--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting, slapping, or thumping a child.

(19) Days--Calendar days, unless otherwise stated.

(20) Employee--An assistant caregiver, substitute caregiver, or any other person a child-care home employs full-time or part-time to work for wages, salary, or other compensation, including kitchen staff, office staff, maintenance staff, or anyone hired to transport a child.

(21) Enrollment--The list of names or number of children who have been admitted to attend a child-care home for any given period of time; the number of children enrolled in a child-care home may vary from the number of children in attendance on any given day.

(22) Entrap--A component or group of components on equipment that forms angles or openings that may trap a child's head by being too small to allow the child's body to pass through, or large enough for the child's body to pass through but too small to allow the child's head to pass through.

(23) Field trips--Activities conducted away from the child-care home.

(24) Food service--The preparation or serving of meals or snacks.

(25) Frequent--More than two times in a 30-day period. Note: For the definition of "regularly or frequently present at an operation" (child-care home) as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(26) Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

(27) Group activities--Activities that allow children to interact with other children in large or small groups. Group activities include storytelling, finger plays, show and tell, organized games, and singing.

(28) Health-care professional--A licensed physician, a licensed advanced practice registered nurse (APRN), a licensed vocational nurse (LVN), a licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the license. This does not include physicians, nurses, or other medical personnel who are not licensed in the United States or in the country in which the person practices.

(29) Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

(30) High school equivalent--

(A) Documentation of a program recognized by the Texas Education Agency (TEA) or other public educational entity in another state, which offers similar training on reading, writing, and math skills taught at the high school level, such as a General Educational Development (GED) certificate; or

(B) Confirmation that the person received home-schooling that adequately addressed basic competencies such as basic reading, writing, and math skills, which would otherwise have been documented by a high school diploma.

(31) Individual activities--Opportunities for the child to work independently or to be away from the group, but supervised.

(32) Infant--A child from birth through 17 months.

(33) Inflatable--An amusement ride or device, consisting of air-filled structures designed for use by children, as specified by the manufacturer, which may include bouncing, climbing, sliding, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(34) Instructor-led training--Training characterized by the communication and interaction that takes place between the student and the instructor. The training must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must communicate with the student in a timely fashion, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this type of training include, classroom training, web-based on-line facilitated learning, video-conferencing, or other group learning experiences.

(35) Janitorial duties--Those duties that involve the cleaning and maintenance of the child-care home, building, rooms, furniture, etc. Cleaning and maintenance include such duties as cleansing carpets, washing cots, and sweeping, vacuuming, or mopping a restroom or a classroom. Sweeping up after an activity or mopping up a spill in a classroom that is immediately necessary for the children's safety is not considered a janitorial duty.

(36) Natural environment--Settings that are natural or typical for all children of the same age without regard to ability or disability. For example, a natural environment for learning social skills is a play group of peers.

(37) Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your:

(A) Home voluntarily closes;

(B) Home must close because of an enforcement action in Chapter 745, Subchapter L of this title (relating to Enforcement Actions);

(C) Permit expires according to §745.481 of this title (relating to When does my permit expire?); or

(D) Home must close because its permit is automatically revoked according to the Human Resources Code §§42.048(e), 42.052(i), or 42.054(f).

(38) Physical activity (moderate)--Levels of activity for a child that are at intensities faster than a slow walk, but still allow the child to talk easily. Moderate physical activity increases the child's heart rate and breathing rate.

(39) Physical activity (vigorous)--Rhythmic, repetitive physical movement for a child that uses large muscle groups, causing the child to breathe rapidly and only enabling the child to speak in short phrases. Typically, the child's heart rate is substantially increased, and the child is likely to be sweating while engaging in vigorous physical activity.

(40) Pre-kindergarten age child--A child who is three or four years of age before the beginning of the current school year.

(41) Regular--On a recurring, scheduled basis. Note: For the definition of "regularly or frequently present at an operation" (child-care home) as it applies to background checks, see §745.601 of this title.

(42) Restrictive device--Equipment that places the body of a child in a position that may restrict airflow or cause strangulation; usually, the child is placed in a semi-seated position. Examples of restrictive devices are car seats, swings, bouncy seats, and high chairs.

(43) Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(44) Sanitize--The use of a product (usually a disinfecting solution) that is registered by the Environmental Protection Agency (EPA) which substantially reduces germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labelling instructions for sanitizing (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). For an EPA-registered sanitizing product or disinfecting solution that does not include labelling instructions for sanitizing (a bleach product, for example), you must follow these steps in order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that children are likely to place in their mouths; and

(D) Allowing the surface or item to air-dry.

(45) School-age child--A child who is five years of age and older and is enrolled in or has completed kindergarten.

(46) Screen time activity--An activity during which a child views media content on a cell or mobile phone, tablet, computer, television, video, film, or DVD. Screen time activities do not include video chatting with a child's family or assistive and adaptive computer technology used by a child with special care needs on a consistent basis.

(47) Self-instructional training--Training designed to be used by one individual working alone and at the individual's own

pace to complete lessons or modules. Lessons or modules commonly include questions with clear right and wrong answers. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(48) Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours of annual training per year.

(49) Special care needs--A child with special care needs is a child who has a chronic physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the movement of large or small muscles, learning, talking, communicating, self-help, social skills, emotional well-being, seeing, hearing, and breathing.

(50) State or local fire marshal--A fire official designated by the city, county, or state government.

(51) Toddler--A child from 18 months through 35 months.

(52) Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(53) Water activities--Related to the use of swimming pools, splashing pools, wading pools, sprinkler play, or other bodies of water.

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. ADMINISTRATION AND COMMUNICATION

### DIVISION 4. OPERATIONAL POLICIES

#### 26 TAC §747.501

##### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

#### §747.501. What written operational policies must I have?

You must develop written operational policies and procedures that at a minimum address each of the following:

- (1) Procedure for the release of children;
- (2) Illness and exclusion criteria;
- (3) Procedures for dispensing medication, or a statement that medication is not dispensed;
- (4) Procedures for handling medical emergencies;
- (5) Discipline and guidance policy that is consistent with Subchapter L of this title (relating to Discipline and Guidance). A copy of Subchapter L may be used for your discipline and guidance policy;
- (6) Safe sleep policy for infants from birth through 12 months old that is consistent with the rules in Subchapter H of this chapter (relating to Basic Requirements for Infants) that relate to sleep requirements and restrictions, including sleep positioning, and crib requirements and restrictions, including mattresses, bedding, blankets, toys, and restrictive devices;
- (7) Animals, if applicable;
- (8) Promotion of indoor and outdoor physical activity that is consistent with Subchapter F of this chapter (relating to Developmental Activities and Activity Plan). Your policies must include:
  - (A) The duration of physical activity at your home, both indoor and outdoor;
  - (B) The recommended clothing and footwear that will allow a child to participate freely and safely in physical activities; and
  - (C) A plan to ensure physical activity occurs on days when extreme weather conditions prohibit or limit outdoor time.
- (9) Procedures for parents to visit the child-care home any time during your hours of operation to observe their child, program activities, the home, the premises, and equipment without having to secure prior approval;
- (10) Procedures for parents to review a copy of the child-care home's most recent Licensing inspection report and how the parent may access the minimum standards online;
- (11) Instructions on how a parent may contact the local Licensing office, access the Texas Abuse and Neglect Hotline, and access the HHSC website;
- (12) Your emergency preparedness plan;
- (13) Procedures for conducting health checks, if applicable; and
- (14) Information on vaccine-preventable diseases for employees, if your licensed child-care home is not located in your own residence. The policy must address the requirements outlined in §747.3411 of this chapter (relating to What must a policy for protecting children from vaccine-preventable diseases include?).

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## SUBCHAPTER F. DEVELOPMENTAL ACTIVITIES AND ACTIVITY PLAN

### 26 TAC §§747.2102 - 747.2105

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

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## SUBCHAPTER H. BASIC CARE REQUIREMENTS FOR INFANTS

### 26 TAC §747.2317

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

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## SUBCHAPTER I. BASIC CARE REQUIREMENTS FOR TODDLERS

### 26 TAC §747.2407

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

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## SUBCHAPTER J. BASIC CARE REQUIREMENTS FOR PRE-KINDERGARTEN AGE CHILDREN

### 26 TAC §747.2507

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

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## SUBCHAPTER K. BASIC CARE REQUIREMENTS FOR SCHOOL-AGE CHILDREN

### 26 TAC §747.2607

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

*§747.2607. What activities must I provide for a school-age child?*

Daily activities for a school-age child must include at least the following:

- (1) Study time for those who choose to do homework;
- (2) Opportunities for outdoor play, weather permitting;
- (3) Opportunities for thinking skills and sensory development. Examples of age-appropriate equipment or activities include sand and water play; construction materials and blocks; puzzles with 50 or more pieces; pattern-making materials, such as wood, paper, plastic, beads, ceramic tiles, cloth, or cardboard; games that contain rules and require some skill or strategy; specific skill development materials such as rulers, tape measures, telescopes, weather observation equipment, models of the solar system, and microscopes; books; and magazines;
- (4) Opportunities for small-muscle development. Examples of age-appropriate equipment or activities include art and craft materials, such as paints, markers, colored pencils, crayons, clay, weaving, or braiding materials; music and musical instruments of all types; and puzzles or interlocking building blocks;
- (5) Opportunities for large-muscle development. Examples of age-appropriate equipment or activities include balls and sports equipment, such as kick balls, baseballs, soccer balls, basketballs, skates, and horseshoes; riding equipment, such as kick scooters or skateboards, with knee pads, elbow pads, and helmets; and outdoor and gym equipment, such as slides, swings, climbing apparatus, and upper-body equipment;
- (6) Opportunities for active play both indoors and outdoors. Examples of age-appropriate active play include active games such as tag and Simon Says, dancing and creative movement to music and singing, simple games, and dramatic or imaginary play that encourages running, stretching, climbing, and walking; and

(7) Opportunities for social and emotional development. Examples of age-appropriate equipment or activities include dolls with detailed, realistic accessories; role-play materials, including real equipment for library, hospital, post office, costumes, makeup, and disguise materials; puppets and puppet show equipment; transportation toys, such as small vehicles or models; play and art materials; nature materials; and human and animal figurines.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray

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Health and Human Services Commission

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For further information, please call: (512) 438-3269



## SUBCHAPTER L. DISCIPLINE

### 26 TAC §747.2705

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

*§747.2705. What types of discipline and guidance or punishment are prohibited?*

There must be no harsh, cruel, or unusual treatment of any child. The following types of discipline and guidance are prohibited:

- (1) Corporal punishment or threats of corporal punishment;
- (2) Punishment associated with food, naps, or toilet training;
- (3) Pinching, shaking, or biting a child;
- (4) Hitting a child with a hand or instrument;
- (5) Putting anything in or on a child's mouth;
- (6) Humiliating, ridiculing, rejecting, or yelling at a child;
- (7) Subjecting a child to harsh, abusive, or profane language;
- (8) Placing a child in a locked or dark room, bathroom, or closet;
- (9) Withholding active play or keeping a child inside as a consequence for behavior, unless the child is exhibiting behavior during active play that requires a brief supervised separation or time out that is consistent with §747.2703(4)(D) of this subchapter (relating to What methods of discipline and guidance may I use?); and

(10) Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age, including requiring a child to remain in a restrictive device.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER P. NIGHTTIME CARE

### 26 TAC §747.3009

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

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## SUBCHAPTER Q. NUTRITION AND FOOD SERVICE

### 26 TAC §§747.3101, 747.3103, 747.3109, 747.3111, 747.3119

#### STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which trans-

ferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

§747.3111. *What are the requirements for a child who requires a special diet or does not want to eat foods I serve?*

(a) To serve a child a therapeutic or special diet, you must:

(1) Have written approval from:

(A) A physician or health-care professional with prescriptive authority if the diet relates to a disability that restricts the child's diet; or

(B) A health-care professional or a registered or licensed dietician if the diet does not relate to a disability that restricts the child's diet;

(2) Maintain the written approval in the child's record; and

(3) Give the information to all caregivers preparing and serving food.

(b) You must discuss recurring eating problems with the child's parent.

(c) You may encourage, but not force children to eat.

(d) You must not serve nutrient concentrates and supplements such as protein powders, liquid protein, vitamins, minerals, and other nonfood substances without written instructions as required in subsection (a)(1) of this section.

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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### 26 TAC §§747.3103, 747.3105, 747.3107, 747.3115, 747.3116

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources 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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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 65. WILDLIFE

#### SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

#### DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF DEER

##### 31 TAC §65.92

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 10, 2020, adopted an amendment to 31 TAC §65.92, concerning CWD Testing, without changes to the proposed text as published in the October 2, 2020, issue of the *Texas Register* (45 TexReg 6962). The rule will not be republished.

The amendment requires permitted deer breeders to report all mortalities of breeder deer possessed in a breeding facility within 14 days of detection and to submit all CWD test samples to an accredited testing laboratory within 14 days of collection.

Prior to 2015, the department's regulatory apparatus for detecting chronic wasting disease (CWD) in captive deer was contained in various subchapters regulating various permits that authorize the holding of deer in captivity. The testing standards imposed by the rules were considered to be at best minimally efficacious for detecting CWD in captive deer populations and were intended to be the least burdensome regulatory footprint possible in light of the fact that up to that point in time, CWD had not been discovered in captive breeding facilities in Texas. However, with the discoveries of multiple CWD-positive deer in deer breeding facilities in 2015 and 2016, the department adopted rules that imposed significantly more robust testing protocols and movement restrictions. Those rules are contained in Chapter 65, Subchapter B, and supersede the testing rules contained in Chapter 65, Subchapter T.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. There is no scientific evidence to indicate that CWD is transmissible to humans. What is known is that CWD is invariably fatal to cervids, and is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease correlates with deer population declines, and human dimensions research suggests that hunters will avoid areas of high CWD prevalence. Additionally, the apparent persistence of CWD in contaminated environments represents a significant obstacle to eradication of CWD from either farmed or free-ranging cervid populations.

It is imperative that deer mortalities within a breeding facility be reported promptly for inventory reconciliation, which is necessary for the department to be able to quickly initiate contact tracing in the event of an epidemiological investigation. Prompt submission of CWD samples aids in early detection of the disease where it exists, which reduces the probability of CWD being transferred from a CWD-positive deer breeding facility to other deer breeding facilities or release sites. Additionally, prompt submission of CWD samples is recommended by accredited diagnostic testing laboratories. The amendment is intended to provide assurances that reporting and testing protocols are optimal.

The department received three comments opposing adoption of the proposed amendment. The commenters stated that 30 days or 60 days was a more feasible time period for the submission of tissue samples because a 14-day limit is problematic for people who need to find veterinarians or sample collectors on short notice, people who live far from a town, those who wish to personally deliver their samples, and individuals who don't live near a facility but are responsible for transporting samples to a lab. The commenters also stated that 14 days is problematic because permit holders prefer to hand-deliver tissue samples in order to avoid the possibility of samples being lost in transit. One commenter stated that the rules should stipulate that the time period for sample submission should begin with the postmarked date of samples, not on the date test results are obtained. The department disagrees with the comments and responds that because the efficacy of disease management strategies is dependent to a large extent on the quality and immediacy of the data upon which decisions are based, the intent of the rule is to ensure that the department receives the greatest number of viable test results in as close to real time as is reasonably possible. If CWD is present within a facility, the longer it takes for the department to know about it, the more problematic the task of protecting a public resource becomes. The department also responds that because all towns in Texas and all accredited testing laboratories are easily within a two-day drive from any point in the state, on that basis the department does not believe the 14-day time period presents a hardship. The department also responds that although it understands that mortalities and subsequent testing obligations are not predictable events, 14 days is sufficient time to locate a qualified person to remove, prepare, and submit a sample. No changes were made as a result of the comments.

The department received five comments supporting adoption of the proposed amendment.

The Texas Chapter of The Wildlife Society, the Texas Wildlife Association, the Texas Foundation for Conservation, the Texas

and Southwestern Cattle Raisers Association, and the Humane Society of the United States commented in favor of adoption of the proposed rule.

The Texas Deer Association and the Deer Breeder Corporation commented against adoption of the proposed rule.

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter.

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 C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

### 31 TAC §§65.101 - 65.103, 65.107, 65.109, 65.111, 65.115

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 10, 2020 adopted amendments to 31 TAC §§65.101 - 65.103, 65.107, 65.109, 65.111, and 65.115, concerning Permits to Trap, Transport, and Transplant Game Animals and Game Birds (popularly known as "Triple T" permits). Section 65.102 is adopted with changes to the proposed text as published in the October 2, 2020, issue of the *Texas Register* (45 TexReg 6971) and will be republished. Sections 65.101, 65.103, 65.107, 65.109, 65.111, and 65.115 are adopted without change and will not be republished.

The change to §65.102, concerning Disease Detection Requirements, places a period at the end of subsection (a).

In general, the amendments harmonize the subchapter with the contents of Chapter 65, Subchapter B, concerning Disease Detection and Response, but also make specific substantive and non-substantive changes as noted.

Prior to 2015, the department's regulatory apparatus for detecting chronic wasting disease (CWD) was contained in this subchapter (Chapter 65, Subchapter T). The testing standards imposed by the rules were considered to be at best minimally efficacious for detecting CWD in captive deer populations and were intended to be the least burdensome regulatory footprint possible in light of the fact that up to that point in time, CWD had not been discovered in captive breeding facilities in Texas. However, with the discoveries of multiple CWD-positive deer in deer breeding facilities in 2015 and 2016, the department adopted rules that imposed more robust testing protocols and movement restrictions. Those rules are contained in Chapter 65, Subchap-

ter B and superseded the testing rules previously in effect under Chapter 65, Subchapter C.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. There is no scientific evidence to indicate that CWD is transmissible to humans. What is known is that CWD is invariably fatal to cervids and is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease correlates with deer population declines, and human dimensions research suggests that hunters will avoid areas of high CWD prevalence. Additionally, the apparent persistence of CWD in contaminated environments represents a significant obstacle to eradication of CWD from either farmed or free-ranging cervid populations.

Additionally, the amendments function to standardize the department's approach to the process of administering the Triple T program. The specificity in the current rules apply primarily to deer, which are by far the most commonly transplanted game species in the state. However, the department occasionally is approached with requests concerning other species of game animals and game birds, and the department believes a standardized set of rules for processing all Triple T requests is appropriate, although there will be exceptions as required for specific species because of biological parameters.

The amendment to §65.101, concerning Definitions, creates a definition for "aggregate acreage" in order to define that term for purposes of allowing multiple landowners to collaborate in stocking and restoration efforts, either as the source of or destination for game animals and game birds. The term is defined as "contiguous tracts of land, to, from, and between which game animals and game birds have complete and unrestricted access, combined by multiple landowners to create an area of land for the purpose of trapping or releasing game animals or game birds under a permit issued under this subchapter." It is biologically important to require all tracts to be contiguous and for released animals to be capable of moving at will for purposes of maximum biological benefit to the resource and the landscape. For purposes of clarity, the amendment also defines "landowner" as "any person who has an ownership interest in a tract of land, and includes a person authorized by the landowner to act on behalf of the landowner as the landowner's agent or manager of an aggregate acreage," which is necessary to clearly delineate what is meant by that term as it used for purposes of aggregate acreage permit issuance.

The amendment also creates a definition for "georeferenced map." A crucial component of the department's CWD management effort is the monitoring of free-ranging deer that are trapped and translocated and captive-bred deer that are introduced to, transferred among, and released from captive herds under department-issued permits. Such activities occur in virtually every area of the state. Because of the sheer geographic scale



involved, the accuracy of geographical information regarding the locations where deer have been transferred by humans is one of the most important components of efficacious disease management efforts. Knowing exactly where transplanted populations were trapped and translocated allows epidemiological investigators to quickly and accurately determine the source and extent of pathways for disease propagation and allows responders to focus resources efficiently and effectively.

The amendment also inserts the term "agricultural products" in the definition of "natural habitat." The intent of the current rules is to authorize releases of game animals and game birds into places where natural habitat alone is capable of providing nutrition and cover and the released species are not dependent on the provision of supplemental, artificial, or unnatural food or cover for survival.

The amendment eliminates the definition of "permit year" and replaces it with the more accurate term "trapping year." The department authorizes trapping activities only at times in the life cycle when those activities would exert the least stress on species being trapped.

The amendment also eliminates the definition of "recruitment," which is an artefact of previous rules and is not employed in the subchapter.

The amendment also eliminates the definition of "stocking policy" because the statutory authority to issue Triple T permits and the criteria for their issuance exist independently of the agency's stocking policy, rendering the reference superfluous.

Finally, the amendment alters the definition of "wildlife stocking plans" to differentiate the content of stocking plans for species other than deer and javelina, which are partially governed by regulatory provisions in Chapter 65, Subchapter A, concerning the content of wildlife management plans for those species. There are no other department rules specifying the content of wildlife management plans for species other than deer and javelina.

The amendment to §65.602, concerning Disease Detection Requirements, eliminates the current contents of the section other than subsection (a)(5) and replaces them with a reference to Subchapter B, Division 2, of the chapter. As stated previously in this preamble, the CWD testing and movement requirements for deer are set forth in Chapter 65, Subchapter B, Division 2, which makes the contents of §65.602 superfluous. Current subsection (a)(5) establishes an identification requirement for deer released under a Triple T permit and is being retained as subsection (b).

The amendment to §65.103, concerning Trap, Transport, and Transplant Permit, consists of several actions. Current subsections (a) - (c) and (f) are eliminated because those subsections are relocated to §65.107, concerning Permit Application and Processing, where they more properly belong. Current subsections (d), (e), and (g) are retained and re-designated as subsections (a), (c), and (b), respectively, with the contents of new subsection (c) altered to stipulate that the antler removal must be at a point within the first two inches above each pedicel. The amendment adds new subsection (d) to stipulate that the department will not issue Triple T permits for desert bighorn sheep or migratory game birds. The department is itself stocking desert bighorn sheep in all suitable habitat as part of a decades-long reintroduction program, and federal law prohibits the trapping and transplanting of migratory birds. The amendment also alters the title of the section to include the shorthand name for the permit (Triple T).

The amendment to §65.107, concerning Permit Application and Processing, consists of the relocated provisions of current §65.103(a) - (c) and (f), with modifications as noted. As noted previously in this preamble, one of the goals of the rulemaking is to standardize the application and issuance process for Triple T permits across all species of game animals and game birds. New §65.107(a)(1) accomplishes those goals. Current paragraph (1) requires applications to be made on a form prescribed by the department. The department has steadily migrated almost all manual application systems to an online format because the ubiquity of smart phones, tablets, laptops, desktops, and other devices makes it possible to utilize automated processes to enhance administrative efficiencies. The new subsection therefore requires an applicant for a Triple T permit to submit an administratively complete application via an online application. Current §65.103(b) requires an applicant for a Triple T permit to submit trap site information, release site information, the number of deer to be trapped at each trap site, and the number of deer to be released at each release site. The new paragraph requires the same information as part of an administratively complete application, consisting of, at a minimum, the specific trap-site information indicated on the application form (including a georeferenced map of the trap site); the specific release-site information indicated on the application form (including a georeferenced map of the release site); the number of game animals or game birds to be trapped at each trap site; the number of game animals or game birds to be released at each release site; and any additional habitat, population, and monitoring information or data the department deems necessary to evaluate the prospective activity. The requirement of geospatial data, as discussed earlier in this preamble, is to enhance the department's ability to conduct contract tracing in the event that epidemiological investigations become necessary. Similarly, the new paragraph broadens the applicability of the current rule language to encompass game animals and game birds, as opposed to being restricted solely to deer.

The amendment to §65.107 alters current paragraph (2) to remove a superfluous reference to the name of the permit.

The amendment to §65.107 alters current paragraph (3) to remove a reference to Urban White-tailed Deer Removal Permits and multiple trap and release sites because new paragraph (4) contains provisions governing Triple T permits for aggregate acreages, which replaces those provisions.

The amendment to §65.107 adds new paragraph (4) to prescribe the requirements for Triple T permits affecting multiple acreages. The department wishes to create a vehicle for multiple landowners to bundle aggregate acreage to qualify for or maximize game animal and game bird translocation to enhance hunting opportunity. The new provision allows Triple T permit issuance for an aggregate acreage based on a single application, provided each participating landowner's name, address, and express consent to join in the aggregate acreage is on file with the department for each tract of land comprising the aggregate acreage; each landowner agrees in writing to the number of game animals or game birds to be trapped or released on the aggregate acreage; and a single landowner has been designated in writing to be the supervisory permittee. Because the Triple T program will be administered via an online application that relates data unique to specific tracts of land enrolled in the program, aggregate acreages must be treated as a single tract for purpose of permit issuance; therefore, a single program participant must be designated to receive the permit and act as the supervisory permittee for Triple T activities.

New paragraph (6) consists of the relocated provisions of current §65.103(b) concerning application deadlines.

The amendment alters the provisions of current paragraph (5) to eliminate the word "agent." The new definition of "landowner" includes a landowner's agent.

The amendment to §65.107 creates new subsection (b) containing the relocated contents of current §65.103(c)(1) - (7).

The amendment to §65.109, concerning Issuance of Permit, stipulates that except as specifically provided otherwise, permits under the subchapter will not be issued without an inspection of the prospective release sites. The department believes that it is prudent to preserve the ability to inspect a prospective release site to ensure that suitable habitat to sustain a population of released game animals or game birds exists and that the release of game animals or game birds will not be detrimental to existing populations or systems.

The amendment also removes references to the department's stocking policy, for reasons discussed previously in this preamble, specifies that permit applications can be approved by employees authorized to do so, updates a citation to regulations governing aerial wildlife management permits, and relocates the provisions of current §65.103(a)(1) and (2) regarding data waiver of inspection for certain properties participating in the department's Managed Lands Deer Permit Program, the submission of population and harvest data, and provisions regarding compliance with the wildlife management plan (WMP) in effect for the property. The current rule contains an obsolete reference to Level II and Level III MLD (managed lands deer) properties. The rules governing the MLDP were extensively revised in 2015, resulting in the elimination of the Level II and Level III designations, which have been replaced by what is now called the Conservation Option of the MLDP.

The amendment also clarifies that the review of department decisions to deny issuance or renewal of a permit relating to deer are to be conducted in compliance with the provisions of Parks and Wildlife Code, Chapter 12, Subchapter G and Subchapter U of the chapter, which is necessary because Parks and Wildlife Code, Chapter 12, Subchapter G and Subchapter U are specific to department permits regarding deer, and the review of such decisions with respect to all other species will be conducted under the provisions of proposed new subsection (e).

The amendment also adds new subsection (e) to establish provisions governing refusal of issuance of permits under the subchapter (other than permits for deer) to persons on the basis of certain previous criminal behavior involving wildlife law. The new subsection allows the department to refuse permit issuance to any person who has been finally convicted of, pleaded *nolo contendere* to, or received deferred adjudication or been assessed an administrative penalty for a violation of: Parks and Wildlife Code, Chapter 43, Subchapters C, E, F, G, H, L, or R; a provision of the Parks and Wildlife Code that is a Class A or B misdemeanor, state jail felony, or felony; Parks and Wildlife Code, §63.002; or the Lacey Act (16 U.S.C. §§3371-3378). In addition, the new section allows the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit under the new provisions and provides for a review process for agency decisions to refuse permit issuance.

The department has determined that the decision to issue a permit to hold protected live wildlife should take into account an applicant's history of violations involving the capture and possession of live animals, major violations of the Parks and

Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of taking or allowing the take of wildlife resources to persons who exhibit a demonstrable disregard for the regulations governing wildlife. Similarly, it is appropriate to deny the privilege of holding wildlife to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported, or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing to issue or renew a permit. Because the elements of the underlying state criminal offense must be proven to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred, and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

The denial of permit issuance or renewal as a result of an adjudicative status listed in the proposed amendment would not be automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to refuse permit issuance based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations were the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

The amendment also provides for department review of a decision to refuse permit issuance or renewal. The amendment requires the department to notify an applicant not later than the 10th day following a decision to refuse permit issuance or denial and to set a time and date for conducting a review of an agency decision to refuse permit issuance or renewal within 10 days of receiving a request for a review. The amendment stipulates that a review panel consist of three department managers with appropriate expertise in the activities conducted under the permit in question. The new provision is intended to help ensure that decisions affecting permit issuance and renewal are correct.

The amendment also prohibits any person who has been finally convicted of, pleaded *nolo contendere* to, received deferred adjudication for, or been assessed an administrative penalty for an offense listed in the section from participating in, assisting, or being involved with an activity authorized under the subchapter. The provision is necessary because permit activities are typically conducted by other persons in addition to the person named on the permit. The department believes that conditions that would prevent a person from obtaining a permit should also apply to persons engaging in permitted activities under a permit.

The amendment to §65.111, concerning Permit Conditions and Period of Validity, creates new subsection (a) to stipulate that the department may place limitations on the hunting or taking of game animals or game birds at a release site that the department deems necessary to facilitate or enhance the establishment of a sustainable population. The department views the authorization for Triple T permits to be an exercise in ethical wildlife management practices and will not allow the hunting of released animals if the circumstances dictate that the population is not established or sustainable.

The amendment to §65.115, concerning Notification, Record-keeping, and Reporting Requirements, requires the notification requirements of subsection (a) to be by email. As discussed earlier in this preamble, the department is attempting to modernize formerly manual processes. The amendment also eliminates a redundancy in subsection (b) regarding the daily log required to be kept by permittees.

The department received five comments supporting adoption of the rules as proposed.

The Texas Chapter of the Wildlife Society, the Texas Wildlife Association, the Texas Foundation for Conservation, the Texas and Southwestern Cattle Raisers Association, and the Humane Society of the United States commented in support of adoption of the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, §43.061, which requires the commission to adopt rules for the content of wildlife stocking plans, certification of wildlife trappers, and the trapping, transporting, and transplanting of game animals and game birds under Chapter 43, Subchapter E.

*§65.102. Disease Detection Requirements.*

(a) The provisions of Subchapter B, Division 2, of this chapter apply to the movement of deer pursuant to a permit issued under this subchapter.

(b) All deer released shall be tattooed in one ear with a department-assigned identification number.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. DEER MANAGEMENT  
PERMIT (DMP)

**31 TAC §65.133**

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 10, 2020, adopted an amendment to 31 TAC §65.133, concerning General Provisions, without changes to the proposed text as published in the October 2, 2020, issue of the *Texas Register* (45 TexReg 6971). The rule will not be republished.

The amendment consists of several changes. The amendment replaces the word "wild" with the term "free-ranging." Under Parks and Wildlife Code, §43.601, the department may issue a permit for the management of the wild white-tailed deer population on acreage enclosed by a fence capable of retaining white-tailed deer and preventing entry by white-tailed deer under reasonable and ordinary circumstances. Under Parks and Wildlife Code, §1.011, all wild animals inside the borders of this state are the property of the people of this state. Parks and Wildlife Code, §1.101, defines "wild," when used in reference to an animal, to mean a species, including each individual of a species, that normally lives in a state of nature and not ordinarily domesticated. The current terminology in §65.133 is imprecise because the distinction it is intended to address is between deer held in captivity and deer that are free-ranging (i.e., capable of coming and going at will). Parks and Wildlife Code, §1.011, is unambiguous: all individual deer, whether free-ranging or captive, are wild and are the property of the people of the state. The amendment eliminates imprecise language and removes a reference to breeder deer as being private property, which is erroneous for the reasons described earlier.

The amendment also updates references to statute and other rules of the department that are referenced in §65.133. The current rule refers to "Scientific Breeder's Permit." In 2017, the Texas Legislature amended Parks and Wildlife Code, Chapter 43, Subchapter L to rename that permit the deer breeder's permit. Similarly, the current rule refers to the department's Managed Lands Deer Program with language that is no longer accurate, as the rules governing that program have been moved. Therefore, the amendment introduces the correct references and terminology in subsection (e). The amendment to subsection similarly corrects a reference to a section title.

The department received one comment opposing adoption of the proposed amendment. The commenter did not offer a reason or rationale for opposing adoption.

The department received five comments supporting adoption of the proposed amendment.

The Texas Chapter of the Wildlife Society, the Texas Wildlife Association, the Texas Foundation for Conservation, the Texas and Southwestern Cattle Raisers Association, and the Humane Society commented in support of adoption of the proposed rules.

The amendment is adopted under the authority of Parks and Wildlife Code, §43.603, which provides that a permit issued under Parks and Wildlife Code, Chapter 43, Subchapter R, is subject to conditions established by the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER T. DEER BREEDER PERMITS

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 10, 2020, adopted the repeal of 31 TAC §65.604, amendments to §§65.601 - 65.603, 65.605, and 65.610 - 65.612, and new §65.604, concerning Deer Breeder Permits. Sections 65.601, 65.602, 65.610, and 65.611 are adopted with changes to the proposed text as published October 2, 2020, issue of the *Texas Register* (45 TexReg 6972). The rules will be republished. The repeal of §65.604, the amendments to §§65.601, 65.603, 65.605, and 65.612, and new §65.604 are adopted without change and will not be republished.

The change to §65.601, concerning Definitions, provides for an effective date of May 15, 2021, for the amendment to the definition of "facility" in paragraph (2), which is intended to allow a reasonable time for affected permittees to arrange for compliance with provisions of the rule that affect the small number of facilities with disjunct pens.

The change to §65.602, concerning Permit Requirement and Permit Privileges; General Provisions, adds language to subsection (e) to allow for the use of facility infrastructure such as chutes and pens to be used to handle animals other than deer, provided the animals are members of species that are not susceptible to chronic wasting disease (CWD). As proposed and adopted, the rules prohibit the commingling of breeder deer with other deer, livestock, exotic livestock, or similar animals. The intent of the provision is to eliminate the possibility of interspecific transfer of diseases, including CWD, to or by breeder deer within deer breeding facilities as a result of co-occupation of or serial introduction to deer breeding facilities by animals other than the specific deer authorized to be possessed in the facility. However, the department received public comment to the effect that the rules would be problematic for persons who are engaged in animal husbandry other than deer breeding because such persons would incur expenses related to duplication of infrastructure used to handle animals. The department determined that so long as such infrastructure is indicated on the required facility diagram and employed only temporarily to handle species that are not susceptible to CWD, there is little risk of disease transmission. The change also implements an effective date of April 1, 2021, for subsections (d) and (e), which the department intends to provide a reasonable timeframe for compliance.

The change to §65.610, concerning Transfer of Deer alters subsection (f)(3)B to replace a reference to "transport permit" with the correct term, which is "transfer permit." The change also alters (f)(7) to clarify that a breeder deer that dies at or en route to or from a veterinary medical facility will be treated by the department as a mortality occurring within the source deer breeding facility for the purposes of calculating testing obligations under the

department's comprehensive CWD management rules in Chapter 65, Subchapter B.

The change to §65.611, concerning Prohibited Acts, alters subsection (d) to provide for department authorization to possess a breeder deer in a nursing facility beyond 120 days of the deer's birth. The department has determined that in some instances, such as natal complications, it may be necessary for a fawn to be kept in a nursing facility beyond six months of age. The change also alters subsections (e) and (l) to accommodate the change made to §65.602 discussed earlier in this preamble.

In general, the amendments harmonize the subchapter with the contents of Chapter 65, Subchapter B, concerning Disease Detection and Response, but also make specific substantive and non-substantive changes as noted.

Prior to 2015, the department's regulatory apparatus for detecting chronic wasting disease (CWD) in deer breeding facilities was contained in this subchapter (Chapter 65, Subchapter T). The testing standards imposed by the rules were considered to be at best minimally efficacious for detecting CWD in captive deer populations and were intended to be the least burdensome regulatory footprint possible in light of the fact that up to that point in time, CWD had not been discovered in captive breeding facilities in Texas. However, with the discoveries of multiple CWD-positive deer in deer breeding facilities in 2015 and 2016, the department adopted rules that imposed more robust testing protocols and movement restrictions. Those rules are contained in Chapter 65, Subchapter B, and supersede the testing rules currently contained in Chapter 65, Subchapter T.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. There is no scientific evidence to indicate that CWD is transmissible to humans. What is known is that CWD is invariably fatal to cervids and is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease correlates with deer population declines, and human dimensions research suggests that hunters will avoid areas of high CWD prevalence. Additionally, the apparent persistence of CWD in contaminated environments represents a significant obstacle to eradication of CWD from either captive or free-ranging cervid populations.

The repeal of §65.604, concerning Disease Monitoring, is necessary because the section is now superfluous and unnecessary, since disease monitoring and testing requirements for CWD, including those for deer breeders and persons who obtain or receive deer from deer breeders, are contained in Chapter 65, Subchapter B.

The amendment to §65.601, concerning Definitions, eliminates the definitions for "accredited test facility," "certified wildlife biologist," "release," and "sale." The definition for "accredited test facility" is no longer necessary since disease monitoring and test-

ing requirements for CWD are contained in Chapter 65, Subchapter B. The amendment to §65.603(b) creates a "certified facility inspector" function to replace that previously performed under the rubric of "certified wildlife biologist," which the department has determined is not an appropriate descriptor of the activities being performed. The definitions for "release" and "sale" are being eliminated because the department is using the term "transfer" to encompass all situations in which a transfer permit is required, which includes for purposes of release and/or sale. For the same reasons, the amendment alters the definition of "transfer permit" to simply state that a transfer permit is a permit authorizing the movement of breeder deer to any person or registered facility authorized to possess or receive breeder deer. Additionally, the amendment replaces the term "unique number" with "unique identifier" to be consistent with terminology used in Parks and Wildlife Code, §43.3561, and clarify that a unique identifier is issued by the department to the deer breeder, who will ultimately assign the number to a breeder deer born in that permit holder's facility. The amendment also alters the definition of "facility" to specify that enclosures within a facility must be contiguous (physically bordering or adjoining each other; connected). The department, in consultation with Texas Animal Health Commission (TAHC), is managing CWD-positive deer breeding facilities that in some cases consist of multiple enclosures that are not contiguous with each other and in some instances are separated by miles of pasture land or private and public roads. Under current rules, deer can be moved between such enclosures without activation of transfer permits. Consequently, neither the department nor TAHC have accurate records documenting which non-contiguous enclosure any particular deer is actually in, or any documentation of movement history between enclosures, which challenges both agencies' disease-management strategies. Requiring a separate facility identification number for each enclosure that is physically separate from other enclosures and requiring a transfer permit to be activated to transfer deer between such enclosures is a prudent disease management and prevention action that is expected to introduce minimal, if any, burden on the permittee; however, the department notes that proposed amendment requires persons who wish to maintain multiple enclosures that are not contiguous to obtain a separate deer breeding permit for each enclosure that is not contiguous to other enclosures.

The amendment to §65.602, concerning Permit Requirement and Permit Privileges; General Provisions, clarifies subsection (a) to provide that a person may possess live deer in this state by means other than a permit (e.g., an authorization to temporarily retain breeder deer in an enclosure to allow them to acclimate to a release site), and removes a generic reference to the subchapter in favor of a reference to a specific provision of the Parks and Wildlife Code that enumerates the specific statutory privileges enjoyed by the holder of a deer breeder's permit. As mentioned previously in this preamble, terms such as "sale" and "release" are being replaced with the term "transfer" because most if not all instances in which a breeder deer is moved require the activation of a transfer permit; those changes are made throughout this rulemaking. Similarly, the amendment eliminates current paragraphs (b)(4), (6) and (7) because the activities addressed in those provisions are also effected by activation of a transfer permit. The amendment also adds new subsection (d) to stipulate that registered breeding facilities may possess only white-tailed deer or only mule deer. The department will not issue a permit allowing both species of deer to be kept in a single facility, which is necessary to eliminate the possibility of accidental or intentional comingling of species and hybridization, and to address disease

concerns associated with comingling white-tailed deer and mule deer. Similarly, the amendment adds new subsection (e), which stipulates that except as provided, no deer, livestock, exotic livestock, or similar animals may be present in, confined in, or have access to a deer breeding facility other than the deer listed on the reconciled herd inventory for the facility reported to the department, which is necessary to reduce disease risks that could be introduced by other animals and not limited to CWD-susceptible species.

The amendment to §65.603, concerning Application and Permit Issuance, clarifies application requirements with respect to the infrastructure of a prospective deer breeding facility, requires an inspection of the facility to be performed by a facility inspector authorized by the department, and establishes the minimum requirements for a person to become an authorized facility inspector.

The amendments clarify several areas regarding the content of applications for deer breeder permits. The current rules require an applicant to "submit a completed application to the department." The application requires, among other things, a plat of the prospective facility (to include individual enclosures, the dimension and size of each enclosure, the approximate location of feeding and watering devices within each enclosure, the approximate location of man-made and/or natural shelters, and the location of all fences and gates). In addition, the application requires a letter of endorsement from a certified wildlife biologist attesting that the prospective facility meets the department's regulatory requirements for facility standards; deer are not currently within the facility; that deer eventually introduced to the facility will have adequate access to food, water, and shade and/or shelter; the facility identified in the application is fully constructed and functional; and any additional information the biologist deems pertinent. The department has determined that the contents of the application relating to facility infrastructure should be specified by rule in order to avoid misunderstandings, confusion, or the implication that the information required in an application is voluntary rather than mandatory or that the accuracy of the information is open to interpretation by the applicant. To that end, the amendment to §65.603 requires an application to include a diagram of the facility that clearly defines each distinct enclosure within the facility, including fences and gates, and explicitly requires the letter of endorsement from an authorized pen inspector to affirm that the infrastructure of a prospective deer breeding facility is adequate for the humane treatment of breeder deer (including adequate access to food, continuous supplies of water and ample cover or shelter), has been secured to prevent ingress to and egress from the facility by animals similar to deer or livestock, and that no animals similar to deer or livestock are present within the facility.

The amendment to §65.603 also alters current rules regarding facility inspections. Under current rule, prospective deer breeding facilities must be inspected by a certified wildlife biologist as a condition of potential licensure. The department has determined that although it is necessary to require facility inspections and to require them to be performed by persons with the educational and experiential background necessary to do so effectively, it is not necessary to require accreditation as a certified wildlife biologist. Therefore, new subsection (b) would stipulate that an authorized facility inspector be a person not employed by the department who has been awarded a bachelor's degree or higher in wildlife science, wildlife management, or related discipline; has at least three years of post-graduate experience associated with breeder deer within the five-year period preceding any facility in-

spection activity; has no record within the previous five years of non-compliance with department regulations regarding breeder deer herd inventories; and has not been finally convicted of or been assessed an administrative penalty for a legal violation that would prevent the person from being an agent or surrogate for a deer breeder under applicable department rules in Chapter 65, Subchapter U. The department reasons that it is appropriate to prohibit persons who exhibit a demonstrable disregard for laws and regulations governing wildlife from acting as an authorized facility inspector for the purposes of the subchapter.

The amendment to §65.603 also stipulates that additions to a facility must be approved by the department. Current rules require permittees to submit an accurate diagram of the facility indicating all changes to the facility; however, it is not explicitly stated that the diagram must be updated each time a change is made to the facility. The amendment remedies that.

Finally, the amendment to §65.603 amends a reference to a subsection within the section, which is necessary because the designation of the referenced subsection has changed as a result of the amendments.

New §65.604, concerning Disease Monitoring, provides a reference to Chapter 65, Subchapter B, Division 2, concerning Chronic Wasting Disease - Movement of Deer, which contains applicable provisions governing disease management with respect to breeder deer.

The amendment to §65.605, concerning Holding Facility Standards and Care of Deer, alters subsection (a) to clarify that facility fencing requirements apply to all facilities authorized to hold breeder deer, including nursing and medical facilities.

The amendment to §65.605 also adds new subsection (b) to require permittees to ensure that deer in a breeding facility have access to adequate food, water, and cover. Although the pen inspection required by §65.603, concerning Permit Application and Issuance, requires attestation that adequate food, a continuous supply of water, and ample cover or shelter is provided at any given breeding facility, the department believes it is important to stipulate that those things are not simply conditions for permit issuance, but expectations of day-to-day operations. The current rule does not explicitly address food, water, or shelter requirements, as the department has thus far considered that since breeder deer are at least anecdotally very valuable to deer breeders, it should be axiomatic that deer breeders would protect the deer they are permitted to possess; however, the department has become aware of situations in which permittees have failed to provide what the department considers to be basic standards of animal care, and in at least one instance a deer breeder has been cited for animal cruelty. Therefore, the department believes it is necessary to provide for such standards by rule.

The amendment also alters current subsection (b) to specify notification requirements for deer breeders in the event that a deer escapes from a breeding facility. Under current rule, a permittee must notify the department immediately upon discovering the escape of a deer from the breeding facility, which initiates a ten-day window for recapture efforts and provides for an additional five-day period provided the permittee proves to the department's satisfaction that reasonable efforts have been made to recapture the deer. The department has encountered situations in which it is difficult to ascertain the nature and progress of a permittee's efforts to recapture escaped deer, which is problematic from a disease management perspective. Therefore, the amendment requires the notification to include a detailed de-

scription of the permittee's intended efforts to recapture the deer, including the methods, dates, and times of attempted recapture efforts and a daily notification of the execution of those recapture efforts. The amendment eliminates the current provision for an additional five-day period for recapture and allows recapture and reintroduction to a deer breeding facility after 10 days only if the department approves that action for disease management purposes. The department believes that 10 days is sufficient time for bona fide recapture attempts to take place, and that reintroduction of escaped deer after that time is warranted only if the department has determined it is necessary, based on the CWD status of the facility in question and that of the surrounding landscape to which the deer has escaped.

The amendment to §65.605 also adds new subsection (d) to address the failure to recapture breeder deer that escape from a deer breeding facility that is prohibited by law from receiving or transferring breeder deer under the provisions of Chapter 65, Subchapter B, Division 2 at the time of or subsequent to the escape. The new subsection addresses such instances by requiring the implementation of a disease-testing plan for the property where the breeding facility is located and any contiguous tract of land under common ownership. The disease-testing plan will specify CWD testing and reporting requirements for deer harvested on the affected properties and additional CWD testing requirements in the deer breeding facility. The intent of the new subsection is to address concerns regarding deer that have escaped from breeding facilities known to be of epidemiological concern with respect to CWD.

The amendment to §65.610, concerning Transfer of Deer, amends subsection (a) to clarify that transfer permit requirements apply to breeder deer in a trailer or vehicle. The current provision requires activation of a transfer permit when deer are moved into or out of a facility but does not specifically indicate an exact point in time at which the transfer permit activation must occur. The department has determined that it is reasonable to assume that transfer activities have started when deer are loaded into a trailer or vehicle; thus, the amendment requires a transfer permit to have been activated prior to deer being possessed in a trailer or vehicle.

The amendment also alters subsection (b) to comport its contents with the disease management provisions of Chapter 65, Subchapter B, which, as noted previously in this preamble, governs the movement of breeder deer pursuant to disease management regulations. The amendment eliminates current paragraphs (1) - (4) and (6) and adds clarifying language to the remaining paragraphs to comport terminology.

The amendment also adds new subsection (c) to stipulate that white-tailed deer and mule deer may not be transferred to any facility located in a county for which there is no open season for that species. The department believes that it is biologically irresponsible to allow breeder deer to be transferred to destinations outside of the natural or historic range of the species, especially in light of the nearly 3,000 reported escapes of breeder deer and the 9,687 breeder deer that department inspections have determined cannot be accounted for by permittees responsible for such deer. Desert mule deer have evolved in and are adapted to a specific historical range in West Texas; to allow desert mule deer to be transferred to facilities outside their historic native range would introduce a host of potential known and unknown problems (transmission of diseases, parasites, etc.) that the department believes can be avoided by prohibiting movement outside of historic range.

The amendment eliminates the contents of current subsection (c) because they are superfluous in light of other provisions governing transfer permits (addressed earlier in this preamble) and replaces them with the contents of current §65.610(d)(1), which provides that the department will not authorize the release of deer if the release would detrimentally affect existing populations or systems.

The amendment alters current subsection (d) by removing paragraph (1) as discussed previously in this preamble.

The amendment alters the provisions of current subsection (e) to clarify that the deer specifically identified on the transfer permit are the only deer that may be moved under the transfer permit during the 48-hour time period authorized by the permit, and that a transport manifest identifying the specific deer in possession while in transport must be physically possessed by the person in possession of the deer during transport if the transfer involves multiple trips, vehicles, or destinations. The intent of the amendment is to remove any ambiguity as to what a transfer permit applies to or what a transfer permit specifically authorizes. The department has encountered situations in which permittees have activated a transfer permit, but the transfer permit does not accurately identify the deer in the transport vehicle or even the number of deer in the transport vehicle. Sometimes there are situations when a deer breeder makes multiple trips or uses multiple transport vehicles to complete a transfer, and it is important that each shipment of deer is accompanied by a transport manifest clearly identifying the specific deer on the transport vehicle. The department believes that it is reasonable to expect that in any given instance of transport, the deer in a trailer or means of transportation are in fact the deer identified on the transfer permit as the deer being transported.

Under the provisions of current subsection (e)(3), a transfer permit may be activated by phone or online. The amendment requires all permit activations to be executed online, but also provides for activation by phone or email in the event the department's online system is unavailable. The department believes that the ubiquity of smart phones, tablets, laptops, and other devices makes phone notification unnecessary except in special circumstances.

The amendment non-substantively alters current subsection (e)(4) to clarify that the current requirement that an application for a transfer permit indicate the source and destination of the deer being moved must include the facility identification numbers assigned by the department to the source and destination facilities. Similarly, the amendment alters current subsection (e)(5) to replace "all activities" with "movement of deer" for purposes of improved precision.

The amendment to current subsection (e)(6) replaces "veterinarian" with "veterinarian's medical facility for emergency medical treatment" to more precisely describe the destination and conditions under which a breeder deer may be transported without activation of a transfer permit, and amends the provision to require that if deer moved without a transfer permit under the provision are removed from the means of transportation and temporarily housed in a location that may house other susceptible species at any point between departure from the source facility and return to the source facility, a transfer permit must be activated prior to the return of the deer to the source facility. The new provision is necessary for effective epidemiological contact tracing in the event that the deer or the source facility become part of an epidemiological investigation at a later date. The amendment also clarifies that an eligible-aged breeder deer that dies at

or while being transported to or from a veterinary facility under the provisions of the proposed amendment is considered to be an eligible mortality for the purposes of the department's CWD management rules contained in Chapter 65, Subchapter B.

The amendment to §65.611, concerning Prohibited Acts, consist of several actions. The amendment alters the provisions of subsection (b) to state that it is an offense to possess or place breeder deer in any place or facility if the herd inventory on file with the department does not account for the deer, which is necessary for purposes of disease control.

The amendment also adds new subsection (d) to prohibit the possession of a breeder deer in a nursing facility later than 120 days following the deer's birth, except as provided in writing by the department. The current rules allow the transport of fawns to nursing facilities in order to provide nourishment until the fawns are self-sufficient. It is a generally accepted fact of deer biology that fawns have been weaned within the first 120 days of life. The department believes that fawns should be returned to their respective breeding facilities when they are capable of feeding on their own.

The amendment also adds new subsection (e) to prohibit the commingling and/or interbreeding of white-tailed deer and mule deer, with exceptions. White-tailed deer and mule deer have different breeding strategies, breeding chronologies, habitat preferences, and predator evasion behaviors, all of which are important in sustaining populations. Hybrids in captivity have shown escape behaviors that are chaotic, confused, and would lead to lower survival probabilities. It is documented in research facilities that hybrids have a higher mortality rate than purebred white-tailed deer or mule deer, and research indicates that hybrid fawns have low survival rates. The department has determined that allowing the production of hybrids and/or their release is unwise.

The amendment also adds new subsection (i) to specifically emphasize that an authorized facility inspector commits an offense by submitting the checklist or letter of endorsement required by the rules if that person has not personally conducted an onsite inspection of the facility in question. The department notes that the offense would be a Class C Misdemeanor, which gives the department a less serious option to pursue for minor infractions, as opposed to a felony or Class B Misdemeanor prosecution for falsification of a government record that is also possible based on the same conduct.

The amendment also adds new subsection (j) to clarify that it is an offense for any person to violate or fail to comply with the provisions of a disease-testing plan issued under the provisions of §65.605(d). Although the rules as adopted require a permittee under certain specific circumstances to follow a disease-testing plan following the failure to capture an escaped deer, and failure to do so would constitute a violation of permit provisions and therefore be an offense, the department believes it is important to emphasize that failure to comply with the disease-testing plan is an offense.

The amendment adds new subsection (k) to prohibit the cloning of white-tailed or mule deer except as specifically authorized under a department-issued permit. The department strongly believes that the unknown and unforeseeable biological consequences resulting from the cloning of native wildlife make it imperative to prohibit any such activity except for one possibility, which is credible scientific research predicated on a compelling scientific need.

The amendment also adds new subsection (I) to prohibit the possession of deer, livestock, exotic livestock, or similar animals in a deer breeding facility, or allow such animals to access a deer breeding facility, except for temporary activities involving species that are not susceptible to CWD.

Finally, the amendment to §65.612, concerning Disposition of Deer, makes non-substantive change to comport the terminology in the section with changes made elsewhere in the rules to standardize terminology with respect to transfer permits.

The department received eight comments opposing adoption of the rules as proposed. All eight commenters articulated some sort of reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow. The department notes that because some commenters offered multiple reasons for opposing adoption, the number of department responses is greater than the total number of comments received.

One commenter opposed adoption and stated that the department has no business regulating deer breeders, that the overpopulation of deer costs the public millions of dollars because of automobile collisions, that doe tags should be eliminated, and that regulatory complexity is causing the number of hunters to decline. The department disagrees with the comment and responds that under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L, the Texas Legislature specifically requires the department to regulate the possession of breeder deer. The department also responds that motor vehicle collisions with deer are not within the commission's regulatory authority to address, that doe tags (antlerless tags) are necessary to ensure that antlerless deer in possession of any person have been legally harvested, and that the appeal of other forms of recreation and the lack of affordable hunting opportunity seem to be the primary drivers of declining hunting participation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that goats used to nurse fawns should be allowed to be possessed within breeding facilities. The department disagrees with the comment and responds that the rules currently in effect already provide for the removal of fawns from a breeding facility for nursing purposes. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that requiring breeders to obtain separate permits for non-contiguous enclosures presents an unnecessary financial burden to permit holders. The department disagrees with the comment and responds, first, that the provisions regarding non-contiguous enclosures have the potential to affect approximately 12 percent of current permit holders to varying degrees; second, any permit holder who chooses not to obtain a separate permit for non-contiguous enclosures can move deer in their possession to a single location without having to obtain a new permit for each non-contiguous enclosure; and third, that the maximum annual additional cost to each affected permit holder is \$200 per non-contiguous enclosure. Although the department does not have access to financial records of permit holders, anecdotal evidence from trade association publications suggests that the additional cost is not burdensome. No changes were made as a result of the comments.

One commenter opposed adoption and stated that ability of facility owners to meet the required testing in all non-contiguous facilities, should they be required to have separate CWD testing standards within herds already conducting adequate surveil-

lance, effectively doubles or triples the cost for business owners to secure permits each year, which is unnecessary and duplicative because breeders are required to test 80% of their eligible mortalities, while maintaining a sample size equal or greater to 3.6% of the age-eligible animals in each facility. The commenter also stated that non-contiguous enclosures are often used to house specific age cohorts of deer and often times do not carry a high mortality rate. The department disagrees with the comment and responds that the rules do not impose testing requirements on any permit holder, but do offer approximately 12 percent of current permit holders a choice between consolidating deer currently possessed in multiple non-contiguous enclosures (without any changes to testing obligations) and obtaining separate permits for each non-contiguous enclosure (which may or may not present additional testing costs, depending on circumstances unique to each permit holder who so decides). The department also notes that there are strategies that would enable permit holders to consolidate deer in a single enclosure and, over time, use those deer to populate additional non-contiguous enclosures under new permits without incurring additional testing costs. Finally, the department notes that prior to the publication of the proposed rules, approximately 25% of the permit holders whose facilities contained disjunct pens had already obtained separate permits for those pens. No changes were made as a result of the comment.

One commenter opposed adoption and stated that instead of requiring a separate permit for each disjunct pen the department should assign a sub-facility identification to each disjunct pen at no cost, which would save money for permit holders by eliminating the need to pay for new permits and increased testing costs. The department disagrees with the comment and responds that, in addition to the responses to previous comments regarding testing costs and fees, the programming costs and attendant delays in implementation associated with reconfiguring the department's electronic applications make such a scenario problematic. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the requirements of proposed §65.603(b)(3) should apply only to deer breeding facilities operated by a certified pen inspector and not facilities inspected by that person in the past. The department agrees with the comment and responds that the provision in question applies to the actions of any person in their capacity as a permit holder, and not to actions as a pen inspector. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should specifically describe the testing requirements for facilities from which deer escape. The department disagrees with the comment and responds that the rules as adopted apply only to facilities designated by the department as not qualified to transfer or receive deer because of insufficient disease testing and only in the event that escaped deer cannot be recaptured. The department notes that such facilities represent an inherent risk independent of the occurrence or causation of escape and because of the unique nature of each such facility in the context of location and other parameters, the department concludes that it is prudent to allow for custom disease testing plans to be implemented when recapture efforts are unsuccessful. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the rules should allow the use of holding and handling infrastructure within facilities to manage species other than deer. One of the commenters stated that such infrastructure should be restricted to



use on species that are not susceptible to CWD. The department agrees with the comments and has changed the rules to allow such infrastructure to be used for the temporary holding and handling of species other than deer, provided they are non-susceptible species.

One commenter opposed adoption and stated that the rule provisions regarding escaped breeder deer could create scenarios where permittees get trapped in "subjective, overburdensome, or restrictive disease testing plans through acts of nature, acts of God, or causes completely outside of their control." The department disagrees with the comment and responds that the rules as adopted apply only to facilities designated by the department as not qualified to transfer or receive deer because of insufficient disease testing and only in the event that escaped deer cannot be recaptured. The department notes that such facilities represent an inherent risk independent of the occurrence or causation of escape and because of the unique nature of each such facility in the context of location and other parameters, the department concludes that it is prudent to allow for custom disease testing plans to be implemented when recapture efforts are unsuccessful. No changes were made as a result of the comment.

One commenter opposed adoption and stated that many ranches hold species other than deer and that the use of pens to house or hold other species causes no harm and the prohibition of such use is not science based, but speculative at best. The commenter stated the rules do not protect deer but are a taking of land without payment. The department disagrees with the comment and responds that the intraspecific transmission of wildlife diseases has been well documented. The department further responds that the rules as adopted do not constitute a taking. The decision to obtain a deer breeder permit is completely voluntary and Parks and Wildlife Code, Chapter 43, Subchapter L, provides that no person may possess live white-tailed or mule deer in captivity for purposes of breeding unless the person possesses a valid permit from the department to do so. No changes were made as a result of the comment.

One commenter opposed adoption and stated that a high-fenced ranch containing deer pens makes escape from a pen irrelevant because the deer are still in captivity. The department disagrees with the comment and responds that if the comment is in regard to the requirement for a separate permit for discrete pens that are currently under a single permit, the intent of the rule is to be able to monitor the movement of breeder deer between sets of pens, not to prevent escape; the department further notes that the current rules require deer breeding facilities to be surrounded by a fence capable of retaining deer at all times. If the comment is in regard to the provisions regarding escape of deer, the department disagrees with the comment and responds that the rules as adopted apply only to deer that escape from a facility that the department has designated as non-movement qualified, which occurs only because the facility is an epidemiological risk to other captive and free ranging populations. No changes were made as a result of the comment.

The department received five comments supporting adoption of the proposed rules.

The Texas Chapter of the Wildlife Society, the Texas Wildlife Association, the Texas Foundation for Conservation, the Texas and Southwestern Cattle Raisers Association, and the Humane Society of the United States commented in support of adoption of the proposed rules.

The Texas Deer Association and the Deer Breeder Corporation opposed adoption of the proposed rules.

### 31 TAC §§65.601 - 65.605, 65.610 - 65.612

The amendments and new section are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under the authority of the subchapter; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

#### §65.601. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned by Parks and Wildlife Code.

(1) Authorized agent--An individual designated by the permittee to conduct activities on behalf of the permittee. For the purposes of this subchapter, the terms 'deer breeder' and 'permittee' include authorized agents.

(2) Facility--

(A) Until May 15, 2021, one or more enclosures, in the aggregate and including additions, that are the site of deer breeding operations under a single deer breeder's permit.

(B) On and after May 15, 2021, one or more contiguous enclosures, in the aggregate and including additions, that are the site of deer breeding operations under a single deer breeder's permit.

(3) Movement qualified--A status, determined by the department, under which the transfer of deer to or from a facility is authorized.

(4) Serial Number--A permanent four-digit number assigned to a deer breeder by the department. A serial number shall be preceded by the prefix "TX".

(5) Transfer permit--A permit authorizing the movement of breeder deer to or from a facility.

(6) Unique identifier--As defined by Parks and Wildlife Code, §43.3561(a)(5).

#### §65.602. *Permit Requirement and Permit Privileges; General Provisions.*

(a) Except as provided in this chapter, no person may possess a live deer in this state unless that person possesses:

(1) a valid permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R; or

(2) specific written authorization under the provisions of this subchapter.

(b) In accordance with Parks and Wildlife Code, §43.357, a person who possesses a valid deer breeder's permit may:

(1) engage in the business of breeding legally possessed breeder deer within the facility for which the permit was issued;

(2) take possession of breeder deer transferred from another facility in compliance with the provisions of this chapter;

(3) transfer breeder deer that are in the legal possession of the permittee; and

(4) except as provided by this subchapter, recapture lawfully possessed breeder deer that have been marked in accordance with Parks and Wildlife Code, §43.3561 that have escaped from a permitted facility.

(c) Unless specifically provided otherwise in this subchapter or the conditions of permit, all permit applications, permit renewals, notifications, reporting, and recordkeeping required by this subchapter shall be submitted electronically via the department's Internet-based deer breeder application.

(d) A deer breeding facility shall contain either white-tailed deer or mule deer, as authorized by the permit. The provisions of this subsection take effect April 1, 2021.

(e) Except for deer that are not required to be identified and reported to the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L, no deer, livestock, exotic livestock, or similar animals may be present in, confined in, or have access to a deer breeding facility other than the deer listed on the reconciled herd inventory for the facility reported to the department; however, infrastructure such as chutes and pens within a permanent structure identified on a facility diagram required under this subchapter may be used to temporarily retain and handle animals other than white-tailed or mule deer held under provisions of a deer breeder permit, provided the animals are members of species that are not CWD-susceptible species. The provisions of this subsection take effect April 1, 2021.

§65.610. *Transfer of Deer.*

(a) General. No person may possess breeder deer in a trailer or vehicle, or remove or allow removal of breeder deer from a trailer, or accept, introduce, or allow introduction of breeder deer into a permitted facility, unless a valid transfer permit has been activated as provided in this section.

(b) Transfer by deer breeder. In accordance with the provisions of Subchapter B, Division 2, of this chapter (concerning Chronic Wasting Disease - Movement of Deer), the holder of a valid deer breeder's permit may transfer legally possessed breeder deer to:

(1) a facility registered with the department for purposes of veterinary treatment; or

(2) an educational display or zoological facility permitted by the department. A transfer under this paragraph is final; breeder deer transferred to a permitted educational display or zoological facility may not be returned to any breeder facility.

(c) White-tailed deer and mule deer may not be transferred to a facility located in a county for which there is no open season for that species.

(d) The department will not authorize the transfer of breeder deer to a release site if the department has determined that the transfer will detrimentally affect existing populations or systems.

(e) Release.

(1) Breeder deer lawfully transferred to a registered release site may be held in temporary captivity for any period of time from March 1 through the eleventh day immediately preceding an open deer season to acclimate the breeder deer to habitat conditions at the release site; however, such temporary captivity must be specifically authorized in writing by the department. Not later than 11:59 p.m. on the eleventh day immediately preceding an open deer season, all deer being held in temporary captivity under the provisions of this paragraph shall be released. Release shall consist of the removal of at least 20 feet of the components of a pen that serve to maintain deer in a state of detention within the pen; however, no opening shall be less than 10 feet in width.

Such components shall be removed for no fewer than 30 consecutive days.

(2) An enclosure used to temporarily detain deer under this paragraph shall be physically separate from any deer breeding facility and the deer being temporarily held shall not be commingled with breeder deer. Deer held in temporary captivity shall not be returned to any deer breeding facility.

(3) The department will not authorize the detention of deer under this paragraph during an open hunting season.

(4) Deer in temporary captivity under the provisions of this paragraph shall not be hunted while in temporary captivity.

(f) Transfer permit.

(1) A transfer permit is valid for 48 consecutive hours from the time of activation.

(2) A transfer permit authorizes the transfer of the breeder deer specifically identified on the transfer permit to one and only one registered facility.

(3) A transport manifest is a written document that specifically identifies the deer in a means of transport at any given time between departure from the source facility identified on the transfer permit and any destination facility identified on the transfer permit. A person in possession of deer during transport under a transfer permit must physically possess a transport manifest under any of the following conditions:

(A) multiple vehicles are employed to transport deer to only one destination identified in a single transfer permit;

(B) a single vehicle is employed for multiple trips to a single destination identified in a single transfer permit; or

(C) a single instance of transport involves stops at multiple destinations.

(4) A transfer permit is activated only by:

(A) utilizing the department's online application; or

(B) notifying the Law Enforcement Communications Center in Austin by phone or email in the event the department's online application is offline or otherwise unavailable to the general public.

(C) It is an offense for any person to transport a deer under a transfer permit unless the person also possesses a confirmation number issued by the department indicating receipt of the notification for that instance of transport.

(5) No person may possess a live breeder deer at any place other than within a permitted facility unless that person also possesses on their person a department-issued transfer permit legibly indicating, at a minimum:

(A) the species, sex, and unique number of each breeder deer in possession;

(B) the facility identification numbers for the source and destination facilities; and

(C) the date and time that the permit was activated.

(6) Not later than 48 hours following the completion of the movement of breeder deer under a transfer permit, the permit shall be completed and submitted to the department.

(7) A deer breeder may transport breeder deer without a transfer permit from a permitted facility to a licensed veterinarian's medical facility for emergency medical treatment, provided:

(A) the transport occurs by the most feasible direct route;

(B) the breeder deer are not removed from the means of transportation at any point from the time of departure from the source facility to the time of return to the source facility, including at the place of treatment; and

(C) the breeder deer do not leave this state.

(D) If a breeder deer is removed from the means of transportation to the medical facility and is temporarily housed in a location that may house other susceptible species, then a transfer permit reflecting that transport must be activated and completed and an additional transfer permit must be activated prior to the deer returning to the deer breeding facility.

(E) An eligible-age deer that is transported to a veterinary medical facility under the provisions of this section and dies at any time before being returned to a breeding facility will be treated as a mortality within the originating facility for the purposes of the requirements of Subchapter B of this chapter.

(g) Marking of vehicles and trailers. No person may possess, transport, or cause the transportation of breeder deer in a trailer or vehicle under the provisions of this subchapter unless the trailer or vehicle exhibits an applicable inscription, as specified in this subsection, on the rear surface of the trailer or vehicle. The inscription shall read from left to right and shall be plainly visible at all times while possessing or transporting breeder deer upon a public roadway. The inscription shall be attached to or painted on the trailer or vehicle in block, capital letters, each of which shall be of no less than six inches in height and three inches in width, in a color that contrasts with the color of the trailer or vehicle. If the person is not a deer breeder, the inscription shall be "TXD". If the person is a deer breeder, the inscription shall be the deer breeder serial number issued to the person.

*§65.611. Prohibited Acts.*

(a) Deer obtained from the wild under the authority of a permit or letter of authority issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, or R shall not be commingled with deer held in a permitted deer breeding facility.

(b) A person commits an offense if that person places or holds breeder deer in captivity at any place or in any facility for which the herd inventory on file with the department does not account for those breeder deer, except for fawn breeder deer that are not yet required to be reported to the department.

(c) No breeder deer shall be held in a trailer or other vehicle of any type except for the purpose of immediate transportation from one location to another.

(d) Except as expressly authorized in writing by the department, no person may possess a breeder deer in a nursing facility beyond 120 days following the deer's birth.

(e) No person may hold more than one cervid species at any time in a deer breeding facility except as provided by §65.602(e) of this title (relating to Application and Permit Issuance), or cause or allow the interbreeding by any means of white-tailed deer and mule deer.

(f) Possession of a deer breeder's permit is not a defense to prosecution under any statute prohibiting abuse of animals.

(g) No deer breeder shall exceed the number of breeder deer allowable for the permitted facility, as specified by the department on the deer breeder's permit.

(h) This subsection does not apply to breeder deer lawfully obtained prior to June 21, 2005. Except as provided in this subsection, no person may:

(1) possess a deer acquired from an out-of-state source; or

(2) import or attempt to import deer from an out-of-state source.

(i) It is an offense for any person the department has authorized as a facility inspector to submit the checklist or letter of endorsement required by §65.603(a)(2) of this title (relating to Application and Permit Issuance) if the person has not personally conducted an onsite inspection at the facility.

(j) It is an offense for any person to violate or fail to comply with the provisions a disease-testing plan created under the provisions of §65.605(d) of this subsection.

(k) No person may clone or authorize or participate in the cloning of a white-tailed deer or mule deer unless specifically authorized to do so by a permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter C. For the purposes of this subsection, cloning is the creation or attempted creation of a white-tailed or mule deer from a single progenitor cell.

(l) Except as provided under §65.602(e) of this title, no person may possess deer, livestock, exotic livestock, or similar animals in a deer breeding facility, or allow deer, livestock, exotic livestock, or similar animals to access a deer breeding facility other than:

(1) the deer identified in the reconciled herd inventory for the facility; and

(2) offspring that are not required to be identified and reported to the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



**31 TAC §65.604**

The repeal is adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under the authority of the subchapter; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

##### SUBCHAPTER A. GENERAL PROVISIONS

##### DIVISION 2. DEFINITIONS

###### 34 TAC §20.25

The Comptroller of Public Accounts adopts amendments to 34 TAC §20.25, concerning definitions, without changes to the proposed text as published in the January 8, 2021, issue of the *Texas Register* (46 TexReg 289). The rule will not be republished.

These amendments are to clarify the procurement rules in Chapter 20. The purpose of including definitions in §20.25 is to define terms used in Chapter 20. The amendments change references in subsections (a) and (b) from "this section" to "this chapter." These changes will ensure the uniform application of the definitions throughout Chapter 20.

No comments were received regarding adoption of the amendment.

These amendments are adopted under Government Code, §2155.0012, which authorizes the comptroller by rule to efficiently and effectively administer state purchasing of goods and services.

These amendments implement Government Code, §§2151.003, 2155.001 and 2155.0011, which outline the general procurement responsibility of the comptroller.

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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Don Neal

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Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



## SUBCHAPTER B. PUBLIC PROCUREMENT AUTHORITY AND ORGANIZATION

### DIVISION 1. PRIMARY AND DELEGATED PROCUREMENT AUTHORITY

#### 34 TAC §20.81

The Comptroller of Public Accounts adopts an amendment to §20.81, concerning general purchasing provisions, without changes to the proposed text as published in the January 8, 2021, issue of the *Texas Register* (46 TexReg 292). The rule will not be republished.

This rule is found in Chapter 20 (Statewide Procurement and Support Services), Subchapter B (Public Procurement Authority and Organization), Division 1 (Primary and Delegated Procurement Authority).

The amendment adds new subsection (d), which describes the authority of the comptroller related to purchasing by state agencies. New subsection (d) restates the limitation on the comptroller's authority in Government Code, §2155.140. Specifically, the comptroller's authority does not apply to purchases from a gift or grant in support of research.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Government Code, §2155.0012, which authorizes the comptroller by rule to efficiently and effectively administer state purchasing of goods and services.

The amendment implements Government Code, §§2151.003, 2155.001 and 2155.0011, which outline the general procurement responsibility of the comptroller.

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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Don Neal

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Comptroller of Public Accounts

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### DIVISION 3. CONTRACT MANAGEMENT GUIDE AND TRAINING

#### 34 TAC §20.133

The Comptroller of Public Accounts adopts amendments to §20.133, concerning training and certification program, without changes to the proposed text as published in the January 8, 2021, issue of the *Texas Register* (46 TexReg 293). The rule will not be republished. This rule is found in Chapter 20 (Statewide Procurement and Support Services), Subchapter B (Public Procurement Authority and Organization), Division 3 (Contract Management Guide and Training).

This amendment corrects an inconsistency. Subsection (i) states that a procurement professional must obtain 24 hours of continuing education every three years; in contrast, subsection (j)(3) refers to 12 hours of required continuing education. These amendments make it clear that a procurement professional must obtain 24 hours of continuing education every three years.

No comments were received regarding adoption of the amendment.

These amendments are adopted under Government Code, §656.051.

These amendments implement Government Code, §§656.051, 656.052, and 656.054 which provides the comptroller with the authority to adopt rules relating to the administration of the training and certification of state agency purchasing and contract management personnel.

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. SPECIAL CATEGORIES OF CONTRACTING

### DIVISION 4. UNIFORM GRANT AND CONTRACT STANDARDS

#### 34 TAC §§20.456 - 20.467

The Comptroller of Public Accounts adopts the repeal of §§20.456 - 20.467, concerning Uniform Grants and Contract Management, without changes to the proposed text as published in the January 8, 2021, issue of the *Texas Register* (46 TexReg 295). The rules will not be republished. This repeals Chapter 20, Subchapter E, Division 4 in its entirety.

The comptroller repeals these sections because the new Texas Grant Management Standards include updated guidance on these issues and supersede the guidance currently in rule. Government Code, Chapter 783 requires the comptroller to establish uniform assurances and standard financial management conditions for certain grants. However, no statute requires or expressly authorizes the comptroller to adopt that guidance as rules.

No comments were received regarding adoption of the amendment.

The repeals are adopted under Government Code, §403.011, which outlines the general powers of the comptroller, and §783.004, which designates the comptroller as the state agency for uniform grant and contract management.

The repeals affect Government Code, §§783.001 - 783.010.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 1. ORGANIZATION AND ADMINISTRATION

##### SUBCHAPTER F. TESTIMONY

#### 37 TAC §1.92

The Texas Department of Public Safety (the department) adopts new §1.92, concerning Reimbursement of Witnesses at Public Safety Commission Hearings. This rule is adopted without changes to the proposed text as published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9391). The rule will not be republished.

New §1.92 was simultaneously proposed with the repeal of §29.201, concerning Reimbursement of Witnesses at Public Safety Commission Hearings to move this section to a more appropriate chapter and subchapter of the department's rules.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and §411.007(f).

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



CHAPTER 15. DRIVER LICENSE RULES  
SUBCHAPTER B. APPLICATION  
REQUIREMENTS--ORIGINAL, RENEWAL,  
DUPLICATE, IDENTIFICATION CERTIFICATES

**37 TAC §15.29**

The Texas Department of Public Safety (the department) adopts new §15.29, concerning Alternative Methods for Driver License Transactions. This rule is adopted without changes to the proposed text as published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9392) The rule will not be republished.

Driver License System (DLS) upgrades underway include programming to allow learner license holders to submit proof of completion of requirements to obtain a provisional license through Texas.gov. This will also allow these applicants to obtain duplicates and change their address without visiting a driver license office, reducing the number of times teen license holders must return to the driver license office. Other changes clarify language and requirements for alternative transactions that will include renewals for commercial driver license holders conforming to recent Federal Motor Carrier Safety Administration (FMCSA) rule changes. The new rule is necessary to move the issuance related information from repealed §15.59 into Subchapter B and clarify that learner, provisional and commercial driver license holders may perform transactions through alternative methods.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation 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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**37 TAC §15.34**

The Texas Department of Public Safety (the department) adopts amendments to §15.34, concerning Renewal Period Prior to Expiration. This rule is adopted without changes to the proposed text as published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9393). The rule will not be republished.

Minors who are eligible to apply for a provisional license may do so sixty (60) days prior to their 18th birthday. The current rule

limits the applicant to a thirty day window for that transaction. The Driver License System (DLS) is programmed to allow the application sixty (60) days prior to their 18th birthday.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation 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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D. Phillip Adkins

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SUBCHAPTER C. EXAMINATION  
REQUIREMENTS

**37 TAC §15.59**

The Texas Department of Public Safety (the department) adopts the repeal of §15.59 concerning Alternative Methods for Driver License Transactions. This repeal is adopted without changes to the proposed text as published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9394). The rule will not be republished.

This repeal is necessary to move the issuance related information in current §15.59 to new proposed §15.29 in Subchapter B and incorporate the exam related information from §15.59 into §15.62, concerning Additional Requirements in Subchapter C. These proposed simultaneous changes will replace §15.59.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation 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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D. Phillip Adkins  
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### 37 TAC 15.62

The Texas Department of Public Safety (the department) adopts amendments to §15.62, concerning Additional Requirements. This rule is adopted without changes to the proposed text as published in the December 25, 2020 issue of the *Texas Register* (45 TexReg 9394). The rule will not be republished.

The Impact Texas Drivers (ITD) program includes components for teens and young adults. The current rule references an adult component that is not being pursued and has been replaced by the teen component of the program. This amendment also adds examination related information from §15.59 that is being repealed.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation 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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## CHAPTER 29. PRACTICE AND PROCEDURE

### 37 TAC §§29.1 - 29.3, 29.5, 29.21, 29.24, 29.27, 29.29, 29.30, 29.32, 29.33

The Texas Department of Public Safety (the department) adopts amendments to §§29.1 - 29.3, 29.5, 29.21, 29.24, 29.27, 29.29, 29.30, 29.32, 29.33, concerning Practice and Procedure. These rules are adopted without changes to the proposed text as published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9395). The rules will not be republished.

These amendments are necessary to implement Senate Bill 616 enacted by the 86th Legislature, specifically changes regarding procedures for contested cases.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and §2001.004 which authorizes state agencies to adopt rules of practice concerning contested cases.

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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### 37 TAC 29.4, 29.6 - 29.10, 29.12 - 29.19, 29.22, 29.23, 29.25, 29.26, 29.28, 29.34, 29.201

The Texas Department of Public Safety (the department) adopts the repeal of §§29.4, 29.6 - 29.10, 29.12 - 29.19, 29.22, 29.23, 29.25, 29.26, 29.28, 29.34, and 29.201, concerning Practice and Procedure. These repeals are adopted without changes to the proposed text as published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9398). The rules will not be republished.

These repeals are necessary to remove department procedural rules currently addressed by Texas Government Code, Chapter 2001, the Texas Rules of Civil Procedure or the administrative rules of the State Office of Administrative Hearings.

No comments were received regarding the adoption of this repeal.

This repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Government Code, §2001.004 which authorizes state agencies to adopt rules of practice concerning contested cases.

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 February 16, 2021.

TRD-202100673  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: March 8, 2021  
Proposal publication date: December 25, 2020  
For further information, please call: (512) 424-5848



## CHAPTER 38. FUSION CENTER OPERATIONS

## SUBCHAPTER A. GENERAL PROVISIONS

### 37 TAC §§38.1 - 38.3

The Texas Department of Public Safety (the department) adopts new §§38.1 - 38.3, concerning General Provisions. These rules are adopted without changes to the proposed text as published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9399). The rules will not be republished.

Section 421.084(a) of the Texas Government Code directs the department to adopt rules to govern the operations of fusion centers in this state, including the establishment of a common concept of operations to provide baseline standards to protect privacy, civil rights, civil liberties and promote consistency and interoperability between the fusion centers in the state. Sections 38.1, 38.2 and 38.3 define terms related to the operation of fusion centers, and provide a common concept for operations for fusion centers, including a required annual capabilities assessment.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to

adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §421.084, which authorizes the department to adopt rules to govern the operations of the fusion centers in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 16, 2021.

TRD-202100674

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: March 8, 2021

Proposal publication date: December 25, 2020

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





# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which

invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Education Agency

### Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 Texas Administrative Code (TAC) Chapter 101, Assessment, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 101 are organized under the following subchapters: Subchapter A, General Provisions; Subchapter B, Implementation of Assessments; and Subchapter C, Local Option.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 101, Subchapters A, B, and C, continue to exist.

The public comment period on the review begins March 5, 2021, and ends at 5:00 p.m. on April 9, 2021. A form for submitting public comments on the proposed rule review is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBOE\\_Rules\\_\(TAC\)/State\\_Board\\_of\\_Education\\_Rule\\_Review](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/State_Board_of_Education_Rule_Review). Comments on the proposed review may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The SBOE will take registered oral and written comments on the review at the appropriate committee meeting in April 2021 in accordance with the SBOE board operating policies and procedures.

TRD-202100761

Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Filed: February 24, 2021



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 101, Assessment, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by TEA in 19 TAC Chapter 101 are organized under the following subchapters: Subchapter AA, Commissioner's Rules Concerning the Participation of English Language Learners in State Assessments; Subchapter BB, Commissioner's Rules Concerning Grade Advancement and Accelerated Instruction; Subchapter CC, Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program; Subchapter DD, Commissioner's Rules Concerning Substitute Assessments for Graduation; Subchapter EE, Commissioner's Rules Concerning the Statewide Testing Calendar and UIL Participation; and Subchapter FF, Commissioner's Rules Concerning Diagnostic Assessment.

As required by the Texas Government Code, §2001.039, TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 101, Subchapters AA-FF, continue to exist.

The public comment period on the review of 19 TAC Chapter 101, Subchapters AA-FF, begins March 5, 2021, and ends April 5, 2021. A form for submitting public comments on the proposed rule review is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/commissioner-rules-tac/commissioner-of-education-rule-review>.

TRD-202100697

Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Filed: February 22, 2021



The State Board of Education (SBOE) proposes the review of 19 Texas Administrative Code (TAC) Chapter 109, Budgeting, Accounting, and Auditing, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 109 are organized under the following subchapters: Subchapter A, Budgeting, Accounting, Financial Reporting, and Auditing for School Districts; Subchapter B, Texas Education Agency Audit Functions; Subchapter C, Adoptions by Reference; and Subchapter D, Uniform Bank Bid or Request for Proposal and Depository Contract.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 109, Subchapters A, B, C, and D, continue to exist.

The public comment period on the review begins March 5, 2021, and ends at 5:00 p.m. on April 9, 2021. A form for submitting public comments on the proposed rule review is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBOE\\_Rules\\_\(TAC\)/State\\_Board\\_of\\_Education\\_Rule\\_Review](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/State_Board_of_Education_Rule_Review). Comments on the proposed review may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The SBOE will take registered oral and written comments on the review at the appropriate committee meeting in April 2021 in accordance with the SBOE board operating policies and procedures.

TRD-202100763

Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Filed: February 24, 2021



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by TEA in 19 TAC Chapter 109 are organized under the following subchapters: Subchapter AA, Commissioner's Rules Concerning Financial Accountability; Subchapter BB, Commissioner's Rules Concerning Financial Exigency; and Subchapter CC, Commissioner's Rules Concerning Federal Fiscal Compliance and Reporting.

As required by the Texas Government Code, §2001.039, TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 109, Subchapters AA-CC, continue to exist.

The public comment period on the review of 19 TAC Chapter 109, Subchapters AA-CC, begins March 5, 2021, and ends April 5, 2021. A form for submitting public comments on the proposed rule review is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/commissioner-rules-tac/commissioner-of-education-rule-review>.

TRD-202100698  
Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Filed: February 22, 2021

## Adopted Rule Reviews

Office of the Governor, Economic Development and Tourism Office

### Title 10, Part 5

The Office of the Governor, Economic Development and Tourism Office ("OOG"), has completed the rule review of 10 TAC Chapter 178, concerning Single Unified Projects. The review was conducted in accordance with Texas Government Code §2001.039.

Notice of the review of 10 TAC Chapter 178, was published in the October 30, 2020, issue of the *Texas Register* (45 TexReg 7724). The OOG received no comments in response to that notice. The OOG considered whether the reasons for adoption of these rules continue to exist.

After its review, the OOG finds that the reasons for adopting rules 10 TAC §§178.1 - 178.5 continue to exist and readopts 10 TAC §§178.1 - 178.5 without changes.

This concludes the review of 10 TAC Chapter 178 under Texas Government Code §2001.039.

TRD-202100707  
Adriana Cruz  
Executive Director, Economic Development and Tourism  
Office of the Governor, Economic Development and Tourism Office  
Filed: February 22, 2021

The Office of the Governor, Economic Development and Tourism Office ("OOG"), has completed the rule review of 10 TAC Chapter 198, concerning Advertising Rules. The review was conducted in accordance with Texas Government Code §2001.039.

Notice of the review of 10 TAC Chapter 198, was published in the October 30, 2020 issue of the *Texas Register* (45 TexReg 7725). The OOG received no comments in response to that notice. The OOG considered whether the reasons for adoption of these rules continue to exist.

After its review, the OOG finds that the reasons for adopting rules 10 TAC §§198.1, 198.2, 198.5, 198.8, 198.9, and 198.12 continue to exist and readopts 10 TAC §§198.1, 198.2, 198.5, 198.8, 198.9, and 198.12 without changes.

This concludes the review of 10 TAC Chapter 198 under Texas Government Code §2001.039.

TRD-202100709  
Adriana Cruz  
Executive Director, Economic Development and Tourism  
Office of the Governor, Economic Development and Tourism Office  
Filed: February 22, 2021

## Texas Department of Licensing and Regulation

### Title 16, Part 4

*(Editor's note: The Texas Department of Licensing and Regulation submitted an adopted rule review notice for publication in the February 12, 2021 issue of the Texas Register (46 TexReg 1071). Due to an error by the Texas Register, one paragraph of the notice was omitted from the publication. Due to the error, the complete notice is being republished in this issue of the Texas Register.*

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 has reviewed the rule chapter listed above and has determined that the reasons for adopting or readopting the rules in this chapter continue to exist. The rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 802. The rules provide details that are not found in the program statutes but are necessary for implementation and operation of this program. For example, the rules: (1) define terms that are used in this program; (2) provide additional detail regarding application requirements; (3) contain detail regarding inspections and other responsibilities of the Department; (4)

set fees; (5) and provide specific standards of care for dogs' and cats' housing, primary enclosures, grouping, exercise, feeding, grooming, veterinary care, and transportation.

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



Texas Education Agency

**Title 19, Part 2**

The State Board of Education (SBOE) adopts the review of 19 Texas Administrative Code (TAC) Chapter 30, Administration, pursuant to the Texas Government Code, §2001.039. The rules in 19 TAC Chapter 30 are organized under the following subchapters: Subchapter A, State Board of Education: General Provisions; and Subchapter B, State Board of Education: Purchasing and Contracts. The SBOE proposed the review of 19 TAC Chapter 30 in the December 18, 2020 issue of the *Texas Register* (45 TexReg 9253).

Relating to the review of 19 TAC Chapter 30, Subchapter A, the SBOE finds that the reasons for adopting Subchapter A continue to exist and readopts the rules. The SBOE received no comments related to the review of Subchapter A. The SBOE proposes an amendment to 19 TAC

§30.1, which can be found in the Proposed Rules section of this issue. The proposed amendment would update the SBOE petition procedures to allow for electronic submission of a petition authorized under Texas Government Code, §2001.021.

Relating to the review of 19 TAC Chapter 30, Subchapter B, the SBOE finds that the reasons for adopting Subchapter B continue to exist and readopts the rules. The SBOE received no comments related to the review of Subchapter B. No changes are necessary as a result of the review.

TRD-202100764

Cristina De La Fuente Valadez

Director, Rulemaking

Texas Education Agency

Filed: February 24, 2021



Texas State Board of Pharmacy

**Title 22, Part 15**

The Texas State Board of Pharmacy adopts the review of Chapter 291, (§§291.120, 291.121, 291.123, 291.125, 291.127, 291.129, 291.131, 291.133), concerning Pharmacies (Services Provided by Pharmacies), Chapter 291, (§§291.151, 291.153), concerning Pharmacies (Other Classes of Pharmacy), Chapter 297, (§§297.1 - 297.11), concerning Pharmacy Technicians and Pharmacy Technician Trainees, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the December 11, 2020, issue of the *Texas Register* (45 TexReg 8886).

No comments were received.

The agency finds the reason for adopting the rule continues to exist.

TRD-202100720

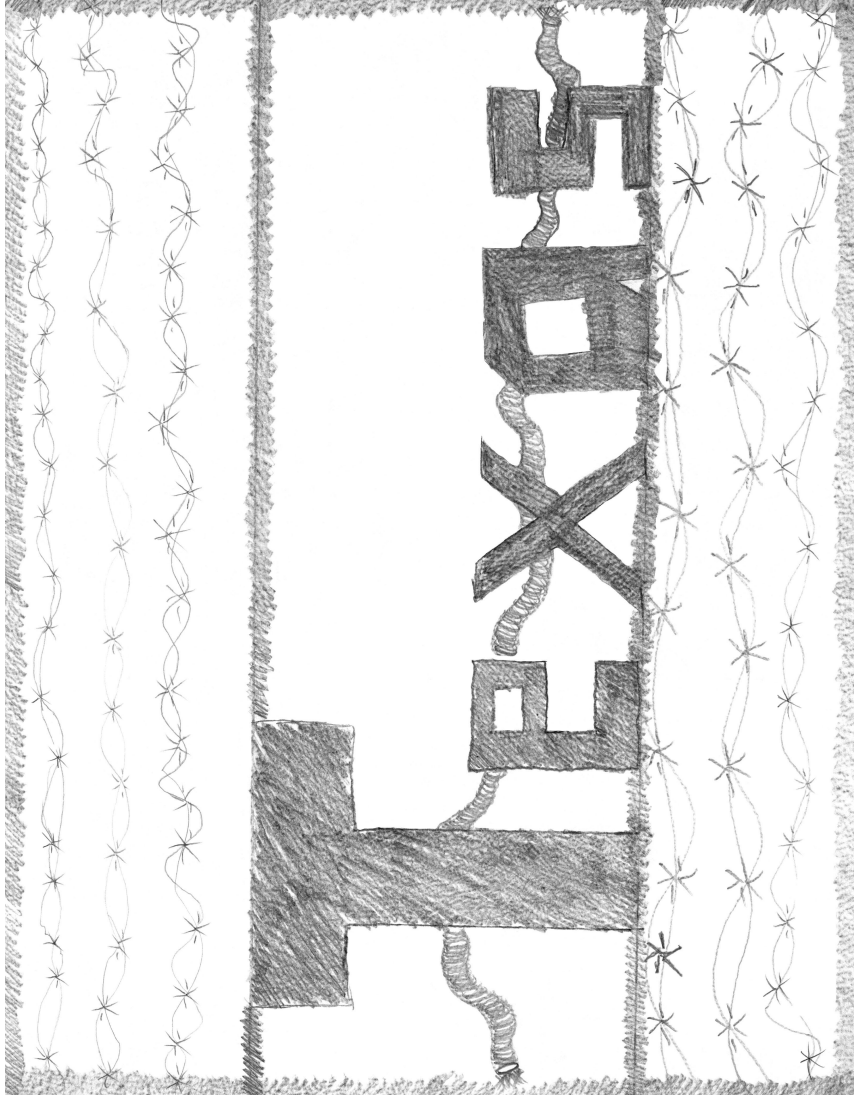
Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Filed: February 22, 2021





# TABLES &

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# GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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**Figure: 19 TAC §30.1(a)**

**STATE BOARD OF EDUCATION**  
**Petition for Adoption of a Rule**

The Texas Government Code, §2001.021, provides that any interested person may petition an agency requesting the adoption of a rule.

The petition [Petitions] should be signed and submitted [to] :

by mail to Rulemaking Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494; or [Commissioner of Education]  
[Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494]

by using the email button at the bottom of this petition form or by emailing directly to [rules@tea.texas.gov](mailto:rules@tea.texas.gov).

---

Name:

Affiliation/Organization (if applicable):

Address:

Telephone:

Date:

Texas Government Code, §2001.021, specifies that an interested person must meet one of the following criteria. Please check all of the following that apply to you.

- resident of Texas
- business entity located in Texas
- governmental subdivision located in Texas
- public or private organization located in Texas that is not a state agency

Proposed rule text (indicate words to be added or deleted from the current text):

Statutory authority for the proposed rule action:

Why is this rule action necessary or desirable?

(If more space is required, attach additional sheets.)

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Petitioner's Signature

(Typing your name in the field above serves as your signature for the purposes of this petition.)

[Click here to submit petition form](#)

***I*****N**

***A*****DDITION**

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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.

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**State Bar of Texas**

Texas Disciplinary Rules of Professional Conduct Rule 1.17.  
Sale of Law Practice

# Committee on Disciplinary Rules and Referenda

## Proposed Rule Changes

### Texas Disciplinary Rules of Professional Conduct

#### Rule 1.17. Sale of Law Practice

*The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the Committee publishes the following proposed rule. The Committee will accept comments concerning the proposed rule through May 4, 2021. Comments can be submitted at [texasbar.com/cdrr](http://texasbar.com/cdrr) or by email to [cdrr@texasbar.com](mailto:cdrr@texasbar.com). The Committee will hold a public hearing on the proposed rule by teleconference at 10:30 a.m. CDT on April 7, 2021. For teleconference participation information, please go to [texasbar.com/cdrr/participate](http://texasbar.com/cdrr/participate).*

#### Proposed Rule

##### Rule 1.17. Sale of Law Practice

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area in which the practice has been conducted;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court *in camera* information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.



## **Comment:**

1. The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.04 (Professional Independence of a Lawyer) and 5.06 (Restrictions on Right to Practice).

## **Termination of Practice by the Seller**

2. The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in an election for the office or resigns from a judiciary position.

3. The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

4. The Rule permits a sale of an entire practice when the lawyer leaves the geographical area of the practice.

5. This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.04(f). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

## **Sale of Entire Practice or Entire Area of Practice**

6. The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to

substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

### **Client Confidences, Consent and Notice**

7. Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.05 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client. Providing the purchaser access to detailed information relating to the representation, such as the client's file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

8. A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered *in camera*.

9. All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

### **Fee Arrangements Between Client and Purchaser**

10. The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

### **Other Applicable Ethical Standards**

11. Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.01); the obligation to avoid disqualifying conflicts, and to secure the client's informed

consent for those conflicts that can be agreed to (see Rule 1.06 regarding conflicts and Rule 1.00 for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.05 and 1.09).

12. If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.15).

### **Applicability of the Rule**

13. This Rule applies to the sale of a law practice of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

14. Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

15. This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

TRD-202100715  
Brad Johnson  
Disciplinary Rules and Referenda Attorney  
State Bar of Texas  
Filed: February 22, 2021



### **Coastal Bend Workforce Development Board**

Request for Proposals (RFP) for Direct Child Care Services Management

Using the Request for Proposals (RFP) method of procurement, the Coastal Bend Workforce Development Board, d.b.a. Workforce Solutions of the Coastal Bend (WFSCB), is soliciting responses from qualified proposers for the Direct Child Care Services Management for Fiscal Year 2021. The service delivery area for the Coastal Bend region consists of the following eleven counties: Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, Nueces, Refugio, and San Patricio.

The Direct Child Care Services Management provides child care services to eligible families in need of child care for their children. The provision of child care services will be delivered by the sub-recipient co-located at the WFSCB career centers. Management of services will include, at a minimum, management of funds, intake, eligibility and management of services for parents and self-arranged providers; assessment and referral to other related services to families and children. This procurement may include provider management functions.

Interested parties may obtain a copy of the RFP by going to our website at: [www.workforcesolutionscb.org](http://www.workforcesolutionscb.org) or by contacting Robert Ramirez via e-mail at: [robert.ramirez@workforcesolutionscb.org](mailto:robert.ramirez@workforcesolutionscb.org).

The RFP process consists of the submission of an application and a proposal. **The deadline for receipt of applications is March 16, 2021, 4:00 p.m. (CST) and proposals is April 19, 2021, 4:00 p.m. (CST).**

Workforce Solutions of the Coastal Bend is an Equal Opportunity Employer/Program. Auxiliary aid and services are available upon request to individuals with disabilities. Deaf, hard-of-hearing or speech impaired customers may contact Relay Texas: 1-800-735-2989 (TDD) and 1-800-735-2988 or 7-1-1 (voice). Historically Underutilized Businesses (HUBs) are encouraged to apply.

TRD-202100746  
Amy Kiddy Villarreal  
Chief Operating Officer  
Coastal Bend Workforce Development Board  
Filed: February 23, 2021



### **Comptroller of Public Accounts**

Notice of Rescheduled Public Hearing on the proposed repeal of §5.36 and amendments to §5.46, and Extension of Public Comment Period

The comptroller published a Notice Public Hearing on the proposed repeal of §5.36 and amendments to §5.46, and Extension of Public Comment Period in the January 29, 2021 issue of the *Texas Register* (46 TexReg 859). The public hearing originally scheduled for February 18, 2021, was canceled due to power outages related to inclement weather. The public hearing is rescheduled for Thursday, March 18, 2021, at 9:00 a.m., Central Standard Time.

The Comptroller of Public Accounts received a request by an interested party to hold a public hearing pursuant to Government Code, §2001.029(b)(3) on the proposed repeal of §5.36, concerning deductions for paying membership fees to certain law enforcement employee organizations, and amendments to §5.46, concerning deductions for paying membership fees to employee organizations. These rules are found in Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter D. The proposed repeal and amendments were published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8490).

This virtual public hearing is structured for the receipt of oral comments only. Individuals may present oral comments when called upon in order of registration. Depending on the number of individuals who register to present oral comments, individuals may be asked to limit their oral comments to a prescribed amount of time. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments through a representative member where possible.

The public may view the virtual public hearing at no cost at: <https://txcpa.webex.com/txcpa/onstage/g.php?MTID=e3cfaa78a5a06083deb2c0ca525c78a71>

Individuals who want to provide oral comments during the hearing or want to register their attendance on the record must submit the following registration information to Rob Coleman, Director, Fiscal Management Division, at [rob.coleman@cpa.texas.gov](mailto:rob.coleman@cpa.texas.gov) or at P.O. Box 13528 Austin, Texas 78711: your name, your email address, whether or not you plan to provide oral comments during the hearing, and whether you will represent yourself or an entity during the hearing (if you will represent an entity, please state the name of the entity). Registration information must be received by Friday, March 12, 2021. Late registration could result in your missing the opportunity to comment on this proposal.

Please note that individuals who timely registered for the public hearing originally scheduled for February 18, 2021, are automatically registered for the public hearing rescheduled for March 18, 2021, and are not required to re-register.

If you are in need of an accommodation, please contact our human resources department by email at [human.resources@cpa.texas.gov](mailto:human.resources@cpa.texas.gov) or by phone at (512) 475-3560 or 1-800-RELAY-TX (TDD) to register. Accommodation requests should be made as far in advance as possible.

The comptroller has extended the deadline for receipt of written comments on the proposal. Comments on the proposal may be submitted to Rob Coleman, Director, Fiscal Management Division, at [rob.coleman@cpa.texas.gov](mailto:rob.coleman@cpa.texas.gov) or at P.O. Box 13528 Austin, Texas 78711. Comments must be received by Thursday, March 18, 2021.

Issued in Austin, Texas, on February 24, 2021.

TRD-202100760

Vicky North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Filed: February 24, 2021

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**Office of Consumer Credit Commissioner**

**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/01/21 - 03/07/2021 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/01/21 - 03/07/21 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> 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 for the period of 02/01/21 - 02/28/21 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 04/01/21 - 6/30/21 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 04/01/21 - 6/30/21 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009<sup>1</sup> for the period of 04/01/21 - 6/30/21 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The lender credit card quarterly rate as prescribed by §346.101<sup>1</sup> for the period of 04/01/21 - 6/30/21 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009<sup>4</sup> for the period of 04/01/21 - 6/30/21 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 04/01/21 - 6/30/21 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009<sup>1</sup> for the period of 04/01/21 - 6/30/21 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/21 - 03/31/21 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 03/01/21 - 03/31/21 is 5.00% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

<sup>3</sup> For variable rate commercial transactions only.

<sup>4</sup> Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-202100744

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 23, 2021

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**Credit Union Department**

**Notice of Final Action Taken**

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application:

Application to Expand Field of Membership - Approved

Wharton County Teachers, Wharton, Texas - See *Texas Register* issue dated November 27, 2020.

TRD-202100687

John J. Kolhoff

Commissioner

Credit Union Department

Filed: February 22, 2021

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**Texas Education Agency**

Public Notice Announcing the Availability of the Proposed Texas Individuals with Disabilities Education Improvement Act of 2004 (IDEA) Eligibility Document: State Policies and Procedures

Purpose and Scope of the Part B Federal Fiscal Year (FFY) 2020 State Application and its Relation to Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA Part B). The Texas Education Agency (TEA) is inviting public comment on its Proposed State Application under IDEA Part B. The annual grant application provides assurances that the state's policies and procedures in effect are consistent with the federal requirements to ensure that a free appropriate public education is made available to all children with a disability from 3 to 21 years of age, including children who have been suspended or expelled from school. 34 Code of Federal Regulations §300.165 requires that states conduct public hearings, ensure adequate notice of those hearings, and provide an opportunity for public comment, including comment from individuals with disabilities and parents of children with disabilities, before adopting policies and procedures.

Availability of the State Application. The Proposed State Application is available on the TEA website at <https://tea.texas.gov/academics/special-student-populations/special-education/programs-and-services/annual-state-application-under-idea-part-b-and-idea-eligibility-documentation>. Instructions for submitting public comments are available from the same site. The Proposed State Application will also be available at the 20 regional education service centers and at the TEA Library (Ground Floor, Room G-102), William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Parties interested in reviewing the Proposed State Application at the William B. Travis location should contact the TEA Division of Special Education at (512) 463-9414.

Procedures for Submitting Written Comments. TEA will accept written comments pertaining to the Proposed State Application by mail to the TEA, Division of Special Education, 1701 North Congress Avenue, Austin, Texas 78701-1494 or by email to [spedruler@tea.texas.gov](mailto:spedruler@tea.texas.gov).

Participation in Public Hearings. TEA will provide individuals with opportunities to testify on the Proposed State Application and the state's policies and procedures for implementing IDEA Part B on April 1, 2021, and April 2, 2021, between 8:30 a.m. and 11:30 a.m. remotely via Zoom Meeting at the following links: April 1 <https://us02web.zoom.us/j/84606327814>; April 2 <https://us02web.zoom.us/j/88146921423>. The public is invited to make comments at one or both meetings. Parties interested in testifying are encouraged to also include written testimony. Public hearing information is available on the TEA website at <https://tea.texas.gov/academics/special-student-populations/special-education/programs-and-services/annual-state-application-under-idea-part-b-and-idea-eligibility-documentation>.

Timetable for Submitting the State Application. After review and consideration of all public comments, TEA will make necessary or appro-

priate modifications and will submit the State Application to the U.S. Department of Education on or before May 21, 2021.

For more information, contact the TEA Division of Special Education by mail at 1701 North Congress Avenue, Austin, Texas 78701; by telephone at (512) 463-9414; by fax at (512) 463-9560; or by email at [spedruler@tea.texas.gov](mailto:spedruler@tea.texas.gov).

Issued in Austin, Texas, on February 24, 2021.

TRD-202100778

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: February 24, 2021

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**Texas Commission on Environmental Quality**

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 5, 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 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 **April 5, 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: 3009 Water Company, L.L.C.; DOCKET NUMBER: 2020-1184-PWS-E; IDENTIFIER: RN102975729; LOCATION: Garden Ridge, Comal County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(h)(3) and (j) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director in writing as to the completion of a water works project and attest to the fact that the completed work is substantially in accordance with the plans and change orders on file with the commission; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with

the monitoring requirements; PENALTY: \$150; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Anita Lewis dba Cassie Water System and Cody Brent Lewis dba Cassie Water System; DOCKET NUMBER: 2020-0956-PWS-E; IDENTIFIER: RN102697794; LOCATION: Burnet, Burnet County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §§290.42(c)(1), 290.110(e)(2) and (6), and 290.111(a)(2) and (h), by failing to provide a minimum treatment consisting of coagulation with direct filtration and adequate disinfection for ground water under the influence of surface water (GUI), and failing to submit Surface Water Monthly Operating Reports for systems that use GUI; and 30 TAC §290.117(f)(1)(A)(ii) and (i)(7), by failing to perform and submit a corrosion control study to identify optimal corrosion control treatment for the system within 12 months after the end of the July 1, 2017 - December 31, 2017, monitoring period in which the system first exceeded the copper action level; PENALTY: \$30,234; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 676-7487; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(3) COMPANY: Cambrian Management, Ltd.; DOCKET NUMBER: 2020-1051-AIR-E; IDENTIFIER: RN102190485; LOCATION: Odessa, Ector County; TYPE OF FACILITY: oil and gas production site; RULES VIOLATED: 30 TAC §106.4(c) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain all air emission control equipment in good condition and operated properly during operation of the site; 30 TAC §106.8(c) and THSC, §382.085(b), by failing to make the records available at the request of agency staff; and 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$9,500; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(4) COMPANY: CATEX Acquisitions, LLC; DOCKET NUMBER: 2019-1784-MWD-E; IDENTIFIER: RN103124202; LOCATION: Giddings, Lee County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.1(b)(2) and §305.42(a) and TWC, §26.121(a)(1), by failing to obtain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: \$1,625; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(5) COMPANY: City of Mercedes; DOCKET NUMBER: 2019-1101-MWD-E; IDENTIFIER: RN101610731; LOCATION: Mercedes, Hidalgo 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 WQ0010347001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$18,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$15,000; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: City of Pearsall; DOCKET NUMBER: 2019-0437-MLM-E; IDENTIFIER: RN102022563; LOCATION: Pearsall, Frio County; TYPE OF FACILITY: fleet refueling station and storage yard; RULES VIOLATED: 30 TAC §324.1, Texas Health & Safety Code, §371.041, and 40 Code of Federal Regulations §279.22(b), by failing to ensure that containers used to store used oil are in good con-

dition and not leaking; 30 TAC §324.6 and 40 Code of Federal Regulations §279.22(c)(1), by failing to mark or clearly label used oil storage containers with the words "Used Oil"; 30 TAC §327.5(a) and TWC, §26.266(a), by failing to immediately abate and contain a discharge or spill; 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure the underground storage tank corrosion protection system is operated and maintained in a manner that will ensure continuous corrosion protection; and 30 TAC §335.261(b)(16)(F)(i) and 40 Code of Federal Regulations §273.14(a), by failing to properly label universal waste batteries, or containers used to store used batteries, with the words "Universal Waste Batteries" or "Used Batteries"; PENALTY: \$16,525; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Clay Water Supply Corporation; DOCKET NUMBER: 2020-1029-PWS-E; IDENTIFIER: RN101188639; LOCATION: Clay, Burleson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM) based on the locational running annual average, and failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to comply with the MCL for TTHM for Stage 2 Disinfection Byproducts at Site 1 for the first quarter of 2020; PENALTY: \$862; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Fort Bend County Municipal Utility District Number 152; DOCKET NUMBER: 2020-1159-MWD-E; IDENTIFIER: RN104293808; LOCATION: Fort Bend, Rosenberg 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 WQ0014532001, Effluent Limitations and Monitoring Requirements Number 1, Final Phase, by failing to comply with permitted effluent limitations; PENALTY: \$1,063; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: G & W Water Supply Corporation; DOCKET NUMBER: 2020-1164-PWS-E; IDENTIFIER: RN101266930; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 15 picoCuries per liter (pCi/L) for gross alpha particle activity, and failing to comply with the MCL of 5 pCi/L for combined radium-226 and radium-228 based on the running annual average; PENALTY: \$3,450; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: General Dynamics Ordnance and Tactical Systems, Incorporated; DOCKET NUMBER: 2020-0938-AIR-E; IDENTIFIER: RN102660909; LOCATION: Garland, Dallas County; TYPE OF FACILITY: aerospace manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review (NSR) Permit Number 51412, Special Conditions (SC) Number 3, Federal Operating Permit (FOP) Number O2594, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 8, and

Texas Health and Safety Code (THSC), §382.085(b), by failing to mark permitted sources in a conspicuous location to correspond with identification on the plot plan and maximum allowable emissions rates table; 30 TAC §116.115(b)(2)(E)(iv) and (c) and §122.143(4), NSR Permit Number 51412, SC Number 6.B, FOP Number O2594, GTC and STC Number 8, and THSC, §382.085(b), by failing to maintain records of the pressure drop readings at least once per week that the system is required to be operated; 30 TAC §116.115(b)(2)(E)(iv) and (c) and §122.143(4), NSR Permit Number 51412, SC Number 9.G, FOP Number O2594, GTC and STC Number 8, and THSC, §382.085(b), by failing to maintain records of the monthly audio, visual, and olfactory inspections of the capture system to check for leaks; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O2594, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; and 30 TAC §122.143(4) and §122.145(2)(B) and (C), FOP Number O2594, GTC, and THSC, §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance, and failing to submit the deviation report no later than 30 days after the end of each reporting period; PENALTY: \$33,571; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Grand Prairie Landfill Gas Production, Limited Liability Company; DOCKET NUMBER: 2020-1160-AIR-E; IDENTIFIER: RN110971256; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: oil and gas production; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit (FOP) Number O3773/General Operating Permit (GOP) Number 517, Site-wide Requirements Number (b)(3), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; and 30 TAC §122.143(4) and (15) and §122.165(a)(7), FOP Number O3773/GOP Number 517, Site-wide Requirements Number (b)(2), and THSC, §382.085(b), by failing to include a signed certification of accuracy and completeness; PENALTY: \$5,626; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Hudson Water Supply Corporation; DOCKET NUMBER: 2020-0933-PWS-E; IDENTIFIER: RN101455954; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(i) and (j) and Texas Health and Safety Code (THSC), §341.0351, by failing to submit any addenda or change orders that involve a health hazard or relocation of facilities to the executive director for review and approval; 30 TAC §290.46(m)(6), by failing to maintain all pumps, motors, valves, and other mechanical devices in good working condition; and 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan at each treatment plant and at a central location that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$1,192; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(13) COMPANY: LAKESHORE UTILITY COMPANY; DOCKET NUMBER: 2020-1150-PWS-E; IDENTIFIER: RN101266039; LOCATION: Malakoff, Henderson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(d)(2)(A), (h), and (i)(2), by failing to collect one lead and copper sample from the facility's one entry point no later than 180 days after the end of the January 1, 2019 - June 30, 2019, monitoring period during which the lead action level was exceeded, have the sample analyzed, and report the results to the executive director (ED); 30 TAC §290.117(f)(1)(A)(ii)

and (i)(7), by failing to perform and submit a corrosion control study to identify optimal corrosion control treatment for the system within 12 months after the end of the January 1, 2019 - June 30, 2019, monitoring period during which the system first exceeded the lead action level; 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2019 - June 30, 2019, monitoring period during which the lead action level was exceeded; 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2019 - June 30, 2019, monitoring period during which the lead action level was exceeded; and 30 TAC §291.76 and TWC, §5.702, by failing to pay annual regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 10843 for calendar year 2016; PENALTY: \$2,505; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: PetroSwift, L.L.C.; DOCKET NUMBER: 2020-0871-WQ-E; IDENTIFIER: RN110974300; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: Ricardo Catano dba Ricky's Burrito and Victoria Catano dba Ricky's Burrito; DOCKET NUMBER: 2020-1030-PWS-E; IDENTIFIER: RN107831414; LOCATION: Odessa, Ector County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: \$3,150; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(16) COMPANY: Rohm and Haas Texas Incorporated; DOCKET NUMBER: 2020-0942-AIR-E; IDENTIFIER: RN100223205; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 751 and PSDTX987, Special Conditions Number 1, Federal Operating Permit Number O1583, General Terms and Conditions and Special Terms and Conditions Number 14, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates; PENALTY: \$7,200; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,880; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: SEGUIN BUSINESS, L.L.C. dba Park Palace 1; DOCKET NUMBER: 2019-1065-PST-E; IDENTIFIER: RN102008588; LOCATION: Seguin, Guadalupe County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$9,142; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: Stolthaven Houston, Incorporated; DOCKET NUMBER: 2020-0692-AIR-E; IDENTIFIER: RN100210475; LOCATION: Houston, Harris County; TYPE OF FACILITY: bulk liquid storage terminal; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 41618, Special Conditions Number 6, Federal Operating Permit Number O1060, General Terms and Conditions and Special Terms and Conditions Number 12, and Texas Health and Safety Code, §382.085(b), by failing to store and transfer chemicals according to the scenarios and their associated vapor control requirements; PENALTY: \$17,550; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$7,020; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2020-0610-MWD-E; IDENTIFIER: RN102078862; LOCATION: Leggett, Polk County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §217.6(d) and §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014796001, Other Requirements Numbers 7 and 8, by failing to submit summary transmittal letters to the TCEQ according to required timelines; 30 TAC §305.125(1) and TPDES Permit Number WQ0014796001, Definition and Standard Permit Conditions Number 1.b, by failing to properly calculate the daily average flow; 30 TAC §305.125(1) and TPDES Permit Number WQ0014796001, Sludge Provisions, Section IV.C, by failing to submit an annual sludge report (ASR) to the TCEQ Regional Office by September 30th of each year; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0014796001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0014796001, Final Effluent Limitations and Monitoring Requirements Number 4, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0014796001, Operational Requirements Number 1 and Permit Conditions Number 2.d, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained, and failing to take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment; 30 TAC §305.125(1) and (11) and §319.7(a) and (c), and TPDES Permit Number WQ0014796001, Monitoring and Reporting Requirements Number 3.c.vi, by failing to maintain quality assurance/quality control records and the results of analyses or measurements; 30 TAC §305.125(1) and (11)(C) and §319.7(a) and (c) and TPDES Permit Number WQ0014796001, Monitoring and Reporting Requirements Number 3.b, by failing to maintain monitoring and reporting records at the facility and make them readily available for review by a TCEQ representative for a period of three years; and 30 TAC §319.11, by failing to comply with recommended sampling and testing methods; PENALTY: \$19,582; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$15,666; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(20) COMPANY: Town of Anthony; DOCKET NUMBER: 2020-0912-PWS-E; IDENTIFIER: RN101200541; LOCATION: Anthony, El Paso County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average; PENALTY: \$1,755; ENFORCEMENT

COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-202100714

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: February 22, 2021



#### Enforcement Orders

An agreed order was adopted regarding LAHIN ENTERPRISES INC. dba Superior Mini Mart, Docket No. 2019-0385-PST-E on February 16, 2021 assessing \$3,946 in administrative penalties with \$789 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Pearland, Docket No. 2019-1183-PST-E on February 16, 2021 assessing \$3,937 in administrative penalties with \$787 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Harlingen, Docket No. 2019-1462-WQ-E on February 16, 2021 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Carlos Antonio Flores and Tomasa C. Flores, Docket No. 2020-0039-MLM-E on February 16, 2021 assessing \$2,688 in administrative penalties with \$537 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding THE PREMCOR REFINING GROUP INC., Docket No. 2020-0107-IWD-E on February 16, 2021 assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GEO SPECIALTY CHEMICALS, INC., Docket No. 2020-0285-PWS-E on February 16, 2021 assessing \$4,355 in administrative penalties with \$871 deferred. Information concerning any aspect of this order 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.

An agreed order was adopted regarding Chesapeake Land Development Company, L.L.C., Docket No. 2020-0457-PWS-E on February 16, 2021 assessing \$1,167 in administrative penalties with \$233 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 Jam Vo, Docket No. 2020-0540-WQ-E on February 16, 2021 assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, 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 RNT Group, LLC, Docket No. 2020-0579-MWD-E on February 16, 2021 assessing \$7,276 in administrative penalties with \$1,455 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Montana Enterprise, LLC dba Bennie's Kountry Store, Docket No. 2020-0603-PST-E on February 16, 2021 assessing \$3,000 in administrative penalties with \$600 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 RABT Inc. dba Cedar Lake Mart, Docket No. 2020-0642-PST-E on February 16, 2021 assessing \$4,790 in administrative penalties with \$958 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 Fatima Family Village, Inc. dba Fatima Family Mobile Home Park, Nhieu Doan dba Fatima Family Mobile Home Park, and Thanh T. Doan dba Fatima Family Mobile Home Park, Docket No. 2020-0659-PWS-E on February 16, 2021 assessing \$1,330 in administrative penalties with \$266 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.

A field citation was adopted regarding DAVE NIX, Docket No. 2020-0675-MSW-E on February 16, 2021 assessing \$875 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 Rowena Water Supply Corporation, Docket No. 2020-0744-PWS-E on February 16, 2021 assessing \$1,625 in administrative penalties with \$325 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 Southwest Independent School District, Docket No. 2020-0834-PWS-E on February 16, 2021 assessing \$1,100 in administrative penalties with \$220 deferred. Information concerning any aspect of this order 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.

An agreed order was adopted regarding River Road Villas, LLC, Docket No. 2020-0847-PWS-E on February 16, 2021 assessing \$276 in administrative penalties with \$55 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Com-

mission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Quadvest, L.P., Docket No. 2020-0896-MWD-E on February 16, 2021 assessing \$4,300 in administrative penalties with \$860 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 Bonham Independent School District, Docket No. 2020-0984-PST-E on February 16, 2021 assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Atkins, 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 4X CONSTRUCTION GROUP LLC, Docket No. 2020-1358-WQ-E on February 16, 2021 assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Stephanie Frederick, 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 Ralph Dwayne Adams, Docket No. 2020-1400-WOC-E on February 16, 2021 assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Strasburger Enterprises, Inc., Docket No. 2020-1489-WR-E on February 16, 2021 assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Alyssa Loveday, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202100728

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 22, 2021



#### Enforcement Orders

An agreed order was adopted regarding Jackie Reaves, Docket No. 2019-0297-IHW-E on February 23, 2021 assessing \$1,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202100772

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 24, 2021



#### Enforcement Orders

An order was adopted regarding Anthony "Tony" Aguilar and Benita Castillo Villasenor, Docket No. 2018-1695-IHW-E on February 24, 2021, assessing \$184,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Audrey

Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Edcouch, Docket No. 2019-0626-MWD-E on February 24, 2021, assessing \$14,200 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Maynard J. Haddad dba H & H Car Wash, Docket No. 2019-0764-PST-E on February 24, 2021, assessing \$15,390 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Safeway Inc. dba Albertsons Express 226, Docket No. 2019-0966-PST-E on February 24, 2021, assessing \$8,717 in administrative penalties with \$1,743 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 the City of Longview, Docket No. 2019-1351-MWD-E on February 24, 2021, assessing \$7,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of China, Docket No. 2019-1525-MWD-E on February 24, 2021, assessing \$18,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KRZ OPERATIONS INC and Zia Mehar dba County Quick Mart, Docket No. 2020-0244-PST-E on February 24, 2021, assessing \$14,950 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aus-Tex Parts & Services, Ltd., Docket No. 2020-0284-MWD-E on February 24, 2021, assessing \$16,764 in administrative penalties with \$3,352 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gregory Paul Mitchell dba Tire Recyclers of East Texas, Docket No. 2020-0512-MSW-E on February 24, 2021, assessing \$8,750 in administrative penalties with \$1,750 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 Aqua Utilities, Inc., Docket No. 2020-0665-PWS-E on February 24, 2021, assessing \$9,480 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WTG Jameson, LP, Docket No. 2020-0757-AIR-E on February 24, 2021, assessing \$88,125 in administrative penalties with \$17,625 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, 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 G. E. HUEBNER CONCRETE INC., Docket No. 2020-0843-WQ-E on February 24, 2021, assessing \$20,000 in administrative penalties with \$4,000 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, 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 Lucky Star RVP, LLC, Docket No. 2020-0872-PWS-E on February 24, 2021, assessing \$3,900 in administrative penalties with \$3,900 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.

TRD-202100783

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 24, 2021



#### Extension of Public Comment Period on Proposed Revisions to 30 TAC Chapter 115 and to the State Implementation Plan

In the January 29, 2021, issue of the *Texas Register* (46 TexReg 868), the Texas Commission on Environmental Quality (commission) published notice of public hearing on the proposed revisions to 30 Texas Administrative Code Chapter 115, Control of Air Pollution from Volatile Organic Compounds, amended §§115.111, 115.112, 115.119, 115.121, and 115.357 and new §§115.170 - 115.181, and 115.183; and corresponding revisions to the State Implementation Plan. The rulemaking preamble and the *Texas Register* notice stated that the commission must receive all written comments by March 2, 2021.

**The commission has extended the deadline for receipt of written comments on the proposal to March 16, 2021 due to impacts from Winter Storm Uri.**

Written Comments. Please choose one of the methods provided to submit your written comments. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). All comments should reference **Rule Project No. 2020-038-115-AI**.

TRD-202100739

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 23, 2021



#### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 5, 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 each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 5, 2021**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Ozona Retail, Inc. and Platinum SA Properties, LLC; DOCKET NUMBER: 2019-0245-MWD-E; TCEQ ID NUMBER: RN102844669; LOCATION: approximately 6.5 miles east of the City of Ozona at the intersection of Interstate Highway 10 and Taylor Box Road, Crockett County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and TCEQ Permit Number WQ0014240001, Effluent Limitations and Monitoring Requirements, Part B, by failing to measure flow five times per week - specifically, respondents did not measure flow from December 2017 - October 2018; 30 TAC §217.330(b), by failing to test each reduced-pressure backflow assembly (RPBA) annually - specifically, the RPBA located in the control room was last tested on July 11, 2016; 30 TAC §305.125(1) and TCEQ Permit Number WQ0014240001, Special Provision Number 9, by failing to inspect the pond sides and bottoms for signs of erosion and leakage at least once per month - specifically, respondents were not conducting monthly inspections of the sides and bottoms of the facultative lagoon and two evaporative ponds; 30 TAC §305.125(1) and §319.5(b) and TCEQ Permit Number WQ0014240001, Effluent Limitations and Monitoring Requirements, Part B, by failing to collect and analyze effluent samples at the intervals specified in the permit - specifically, respondents did not collect and analyze samples for pH for the months of July 2017, November 2017, June 2018, September 2018, and October 2018, and did not collect and analyze samples for biochemical oxygen demand (five day) for the month of October 2018; 30 TAC §305.125(1) and TCEQ Permit Number WQ0014240001, Operational Requirement Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained - specifically, a water pipe in the west evaporation pond was broken; 30 TAC §30.350(d) and (e) and §305.125(1) and TCEQ Permit Number WQ0014240001, Operational Requirement Number 9 and Special Provision Number 2, by failing to employ or contract with one or

more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid Class D license or higher - specifically, process control activities were conducted at the facility from August 7, 2017, until November 16, 2018, by persons not holding a valid Class D license or higher; and 30 TAC §305.125(1) and TCEQ Permit Number WQ0014240001, Monitoring Requirement Number 5, by failing to have automatic flow measuring devices accurately calibrated by a trained person at plant start-up and thereafter not less often than annually - specifically, the facility's flow meter was not calibrated in 2016, 2017, or 2018; PENALTY: \$36,242; STAFF ATTORNEY: Clayton Smith, Litigation, MC 175, (512) 239-6224; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: RCI HOLDINGS, INC.; DOCKET NUMBER: 2019-0603-PWS-E; TCEQ ID NUMBER: RN109161711; LOCATION: 10737 Cutton Road, Houston, Harris County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director by the tenth day of the month following the end of each quarter for the third and fourth quarters of 2018; PENALTY: \$173; STAFF ATTORNEY: Jess Robinson, Litigation, MC 175, (512) 239-0455; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: RCI HOLDINGS, INC.; DOCKET NUMBER: 2019-1741-PWS-E; TCEQ ID NUMBERS: RN108800533 and RN105818264; LOCATIONS: 16328 North Interstate Highway 35, Austin, Travis County (Facility 1 - Foxy's Cabaret) and 12913 Highway 87, Lubbock, Lubbock County (Facility 2 - Jaguars Gold Club); TYPE OF FACILITIES: public water systems; 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 monitoring period (Facility 1); 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, 2016 - December 31, 2018 monitoring period (Facility 1); 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the public water system until the facility is decommissioned (Facility 1); 30 TAC §290.46(f)(2) and (3)(A)(i)(III), and (ii)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request - specifically, the records of the amount of each chemical used each week and the amount of water distributed each week were not available (Facility 1); 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements (Facility 1); 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's ground storage tank (Facility 1); 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility's two pressure tanks (Facility 1); 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years (Facility 1); 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of the facility's well (Facility 1); 30 TAC §290.43(c)(3), by failing to ensure that the discharge opening of the overflow is covered with a gravity-hinged and weighted cover, an elastomeric duckbill valve, or other approved device to prevent the entrance of insects and other nuisances (Facility 1); 30 TAC §290.43(c)(4), by failing to provide the ground storage tank with a liquid level indicator (Facility 1); and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant

Level Quarterly Operating Report to the ED each quarter by the tenth day of the month following the end of each quarter for the second quarter of 2019 (Facility 2); PENALTY: \$1,489; STAFF ATTORNEY: Jess Robinson, Litigation, MC 175, (512) 239-0455; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929 (Facility 1 - Foxy's Cabaret); Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092 (Facility 2 - Jaguars Gold Club).

(4) COMPANY: Volente Vision, LLC; DOCKET NUMBER: 2020-0855-PWS-E; TCEQ ID NUMBER: RN101227627; LOCATION: 16107 Farm-to-Market Road 2769 near Leander, Travis County; TYPE OF FACILITY: public water system; 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 2018 monitoring period; and 30 TAC §290.106(e), by failing to report the results of nitrate sampling to the ED for the January 1, 2019 - December 2019 monitoring period; PENALTY: \$452; STAFF ATTORNEY: Roslyn Dubberstein, Litigation, MC 175, (512) 239-0683; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

TRD-202100716

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: February 22, 2021



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Gypsy River LLC, Jeromy Foy dba Gypsy River LLC and Tiffany Klinefelter dba Gypsy River LLC: SOAH Docket No. 582-21-1441; TCEQ Docket No. 2019-0510-PWS-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

**10:00 a.m. - March 25, 2021**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed April 1, 2020 concerning assessing administrative penalties against and requiring certain actions of Gypsy River LLC, Jeromy Foy dba Gypsy River LLC and Tiffany Klinefelter dba Gypsy River LLC, for violations in Comal County, Texas, of: 30 Texas Administrative Code §§290.42(c)(1), 290.110(e)(2) and (e)(6), 290.111(a)(2) and (h), and 290.122(b)(2)(B) and (f).

The hearing will allow Gypsy River LLC, Jeromy Foy dba Gypsy River LLC and Tiffany Klinefelter dba Gypsy River LLC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Gypsy River LLC, Jeromy Foy dba Gypsy River LLC and Tiffany Klinefelter dba Gypsy River LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity

to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Gypsy River LLC, Jeromy Foy dba Gypsy River LLC and Tiffany Klinefelter dba Gypsy River LLC to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Gypsy River LLC, Jeromy Foy dba Gypsy River LLC and Tiffany Klinefelter dba Gypsy River LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Health & Safety Code ch. 341 and 30 Texas Administrative Code chs. 70 and 290; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §§70.108 and 70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ryan Rutledge, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at [www.tceq.texas.gov/goto/efilings](http://www.tceq.texas.gov/goto/efilings) or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 23, 2021

TRD-202100771

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 24, 2021



### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the TCEQ on February 12, 2021, in the matter of the Executive Director of the Texas Commission on Environmental Quality v. Garrison Maurer; SOAH Docket No. 582-20-1744; TCEQ Docket No. 2019-0219-MLM-E. The Commission will consider the

Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Garrison Maurer on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Mehgan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-202100782

Laurie Gharis  
Chief Clerk

Texas Commission on Environmental Quality

Filed: February 24, 2021



## General Land Office

Request for Applications for the 2022-2023 Texas General Land Office Oil Spill Prevention and Response Program for Research, Testing and Development of Oil Discharge Prevention and Response Technology, Training, and Community Outreach

**Filing Authority.** The availability of funds under the Request for Applications described herein (the "RFA") is authorized by Tex. Nat. Res. Code §40.302, and will be contingent on state appropriations for fiscal years 2022-23, September 1, 2021, to August 31, 2023.

**Eligible Applicants.** The General Land Office (GLO) requests applications under the RFA from State of Texas Institutions of Higher Education.

**Description.** The purpose of this program is for the GLO to contract with state institutions of higher education to perform research, testing, and development of oil discharge prevention and response technology, oil discharge response training, wildlife and natural resources rescue and rehabilitation, development of computer models to predict the movements and impacts of unauthorized discharges of oil, and other purposes consistent with and in furtherance of the purposes of the **Oil Spill** Prevention and Response Act of 1991, Tex. Nat. Res. Code Chapter 40.

**Dates of Project.** The program will be implemented from September 1, 2021, through August 31, 2023. Applicants should plan for a starting date of no earlier than September 1, 2021, and an ending date of no later than August 31, 2023, contingent on the continued availability of funding.

**Project Amount.** Approximately \$1.25 million per year will be available for projects funded through the GLO **Oil Spill** R&D program. It is anticipated that most successful applications will be for two-year projects. There is no match requirement under this program, however, preferential consideration will be given to applicants offering matching funds, including in-kind match.

This program is funded entirely with state funds and is contingent on the GLO receiving sufficient state appropriations to carry out the program.

**Selection Criteria.** Applications will be evaluated through an internal, and if applicable, an external peer review process. Several criteria will be used in the review. For example, applications will be evaluated on scientific merit and soundness as well as clear and useful milestones or deliverables.

The GLO will also consider the likelihood that the application will increase the capability, or improve the knowledge and technology, necessary to prevent, respond to, and clean-up spills of crude oil and petroleum products in coastal, offshore environments, marine shorelines, estuarine waters, and marshes. The clarity of the budget and capability or qualifications of the listed investigator(s) will be reviewed. This section represents a sample of criteria and not an exclusive or complete list.

The GLO is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit the GLO to pay any costs before an application is approved. The issuance of this RFA does not obligate the GLO to award a grant or pay any costs incurred in preparing a response.

**Requesting the Application.** The complete RFA will be posted on the GLO web page at <http://www.glo.texas.gov/coast/grantprojects/osr/index.html> for viewing and downloading.

**Further Information.** To ensure no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, all questions must be submitted in writing to the GLO contact persons identified in the program guidelines of the RFA at <http://www.glo.texas.gov/coast/grant-projects/osr/index.html> no later than 30 days after publication in the *Texas Register*.

**Deadline for Receipt of Applications.** The deadline for GLO receipt of applications has been extended, and is now 5:00 p.m. (Central Time), March 11, 2021, to be eligible for consideration.

TRD-202100780

Mark Havens

Deputy Land Commissioner and Chief Clerk  
General Land Office

Filed: February 24, 2021



## Texas Health and Human Services Commission

Criminal History Requirements for Child Care Operations

26 TAC §745.661 (relating to What types of criminal convictions may affect a person's ability to be present at an operation?) states that the three charts listed in subsection (a) of this section are updated annually and published every January in the *Texas Register* as an "In Addition" document. The three charts are entitled: (1) Licensed or Certified Child Care Operations: Criminal History Requirements; (2) Foster or Adoptive Placements: Criminal History Requirements; and (3) Registered Child Care Homes and Listed Family Homes: Criminal History Requirements. On January 1, 2021, the charts and the proposed changes to these charts were published and made available for written public comment in the *Texas Register* (46 TexReg 222). The written public comment period closed on January 30, 2021. No comments were received. As a result, the three Criminal History Requirements charts have been adopted as proposed.

TRD-202100762

Karen Ray

Chief Counsel

Health and Human Services Commission

Filed: February 24, 2021



Notice of Public Hearing on Proposed Payment Rates for HCBS - Adult Mental Health Supported Home Living and YES Waiver In-Home Respite

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on March 22, 2021, at 9:00 a.m., to receive public comments on the proposed payment rates for Home and Community-Based Services - Adult Mental Health (HCBS-AMH) Supported Home Living (SHL) and Youth Empowerment Services (YES) Waiver In-Home Respite. This hearing was originally scheduled for February 17, 2021, but was cancelled due to a weather-related office closure.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only. Physical entry to the hearing will not be permitted. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

<https://attendee.gotowebinar.com/register/6336540899642733071>.

After registering, you will receive a confirmation email containing information about joining the hearing. You can also dial in using your phone at (562) 247-8422, access code 818-813-843.

If you are new to GoToWebinar, please download the GoToMeeting app at <https://global.gotomeeting.com/install/626873213> before the hearing starts.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. HHSC will archive the public hearing; the archive can be accessed on demand after the hearing at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

**Proposal.** HHSC proposes to convert the HCBS-AMH SHL hourly payment rate to a 15-minute rate of \$5.60, effective April 1, 2021, and convert the YES Waiver In-Home Respite rate to a 15-minute rate of \$5.22. Transitioning of the HCBS-AMH SHL and YES Waiver In-home Respite rates to 15 minutes is necessary to implement electronic visit verification.

**Methodology and Justification.** The proposed payment rate for HCBS-AMH SHL was developed in compliance with HHSC's established rate methodology in Title 1 of the Texas Administrative Code (1 TAC) §355.9070, relating to Reimbursement Methodology for Home and Community-Based Services - Adult Mental Health Program. The

proposed payment rate for YES Waiver was developed in compliance with HHSC's established rate methodology in 1 TAC §355.9060, relating to Reimbursement Methodology for the Youth Empowerment Services Waiver Program.

**Briefing Packet.** A briefing packet describing the proposed payment rates is available at <https://rad.hhs.texas.gov/proposed-rate-packets>. Interested parties may obtain a copy of the briefing packet before the hearing by contacting the HHSC Provider Finance Department by telephone at (512) 424-6637; by fax at (512) 730-7475; or by e-mail at [RAD-LTSS@hhsc.state.tx.us](mailto:RAD-LTSS@hhsc.state.tx.us).

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by email to [RAD-LTSS@hhsc.state.tx.us](mailto:RAD-LTSS@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

**Preferred Communication.** During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For the quickest response, please use email or phone, if possible, for communication with HHSC related to this public hearing.

TRD-202100736

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 23, 2021

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**Department of State Health Services**

Licensing Actions for Radioactive Materials

During the first half of January 2021, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Business Filing and Verification Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
EL PASO	IONETIX CORPORATION	L07100	EL PASO	00	1/12/21
FRISCO	FRISCO MEDICAL CENTER LLP	L07099	FRISCO	00	1/13/21
PLANO	GENESISCARE USA LANDMARK LLC	L07097	PLANO	00	1/06/21
THROUGHOUT TX	KNR PIPELINE SERVICES LLC	L07098	SPRING	00	1/07/21

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
ABILENE	HENDRICK MEDICAL CENTER	L02433	ABILENE	131	1/05/21
ANGLETON	ISOTHERAPEUTICS GROUP LLC	L05969	ANGLETON	45	1/08/21
BAYTOWN	CHEVRON PHILLIPS CHEMICAL COMPANY LP	L00962	BAYTOWN	54	1/07/21
BEAUMONT	EXXON MOBIL CORPORATION	L00603	BEAUMONT	108	1/11/21
BISHOP	TICONA POLYMERS INC	L02441	BISHOP	65	1/11/21
DALLAS	DALLAS MEDICAL CENTER LLC	L06584	DALLAS	16	1/04/21
DALLAS	UT SOUTHWESTERN MEDICAL CENTER	L06663	DALLAS	22	1/13/21
FORT WORTH	UNIVERSITY OF NORTH TEXAS HEALTH SCIENCE CENTER AT FORT WORTH	L06123	FORT WORTH	09	1/05/21
FREEPORT	CORTEVA AGRISCIENCE LLC	L07021	FREEPORT	01	1/11/21



AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

GAINESVILLE	INSIGHT HEALTH CORP	L05504	GAINESVILLE	26	1/04/21
HOUSTON	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST WEST HOSPITAL	L06806	HOUSTON	04	1/15/21
HOUSTON	STEARNS CONRAD AND SCHMIDT CONSULTING ENGINEERS INC	L06209	HOUSTON	06	1/11/21
HOUSTON	SET ENVIRONMENTAL INC	L06837	HOUSTON	06	1/14/21
HOUSTON	THE METHODIST HOSPITAL DBA HOUSTON METHODIST	L00457	HOUSTON	212	1/05/21
LAREDO	LAREDO REGIONAL MEDICAL CENTER LP DBA DOCTORS HOSPITAL OF LAREDO	L02192	LAREDO	48	1/15/21
LUBBOCK	METHODIST CHILDRENS HOSPITAL DBA JOE ARRINGTON CANCER CENTER	L06900	LUBBOCK	10	1/04/21
MIDLAND	MIDLAND COUNTY HOSPITAL DISTRICT DBA MIDLAND MEMORIAL HOSPITAL	L00728	MIDLAND	123	1/08/21
PLANO	COLUMBIA MEDICAL CENTER OF PLANO SUBSIDIARY LP DBA MEDICAL CITY PLANO	L02032	PLANO	124	1/04/21
SAN ANTONIO	SOUTHWEST RESEARCH INSTITUTE	L00775	SAN ANTONIO	89	1/15/21

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

TEXARKANA	RED RIVER PHARMACY SERVICES	L05077	TEXARKANA	37	1/08/21
THROUGHOUT TX	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS MEDICAL CENTER	L06335	AUSTIN	37	1/13/21
THROUGHOUT TX	ALPHA TESTING INC	L03411	DALLAS	37	1/08/21
THROUGHOUT TX	ALLIANCE GEOTECHNICAL GROUP INC	L05314	DALLAS	44	1/07/21
THROUGHOUT TX	METHODIST HOSPITALS OF DALLAS	L00659	DALLAS	139	1/12/21
THROUGHOUT TX	ST DAVIDS HEART & VASCULAR PLLC DBA AUSTIN HEART	L04623	FREDRICKSBURG	101	1/04/21
THROUGHOUT TX	THE UNIVERSITY OF TEXAS MEDICAL BRANCH OFFICE OF ENVIRONMENTAL HEALTH AND SAFETY	L01299	GALVESTON	116	1/04/21
THROUGHOUT TX	ECS SOUTHWEST LLP	L06693	HOUSTON	10	1/11/21
THROUGHOUT TX	VERSA INTEGRITY GROUP INC	L06669	HOUSTON	30	1/07/21
THROUGHOUT TX	PHOENIX INDUSTRIAL SERVICES 1 LP	L07015	LA PORTE	05	1/07/21
THROUGHOUT TX	INSPECTION SPECIALTIES INC	L06834	MIDLAND	03	1/07/21
THROUGHOUT TX	WEATHERFORD US LP	L02756	PEARLAND	30	1/14/21
THROUGHOUT TX	BEYOND ENGINEERING AND TESTING LLC	L06924	ROUND ROCK	06	1/07/21
THROUGHOUT TX	GORRODONA ENGINEERING SERVICES INC	L06872	SAN ANTONIO	03	1/08/21
THROUGHOUT TX	TEXAS ONCOLOGY PA	L05502	SHERMAN	22	1/15/21

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

THROUGHOUT TX	ALLENS NUTECH INC DBA NUTECH INC	L04274	TYLER	96	1/06/21
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RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
AUSTIN	NORTHWEST SURGERY CENTER	L06236	AUSTIN	04	1/05/21
BROWNSVILLE	BHS PHYSICIANS NETWORK INC	L06226	BROWNSVILLE	02	1/11/21
DALLAS	DALLAS NEPHROLOGY ASSOCIATES DBA DALLAS TRANSPLANT INSTITUTE - DTI	L02604	DALLAS	32	1/08/21
THROUGHOUT TX	ALLIED WIRELINE SERVICES LLC	L06374	HOUSTON	21	1/07/21

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
COPPELL	LOGISTICS SYSTEMS INCORPORATED	L06337	COPPELL	06	1/07/21
PASADENA	ARKEMA INC	L06321	PASADENA	06	1/11/21
PLANO	TRURADIATION PARTNERS PLANO LLC	L06617	PLANO	13	1/08/21

DENIAL ORDERS ISSUED:

Name	Type of Order	License #	Address	Action	Date of Issuance
Gulf Coast Cancer and Diagnostic Center at Southeast, Inc. d/b/a Gulf Coast Cancer Center at Southeast	Denial of Radioactive Material License Renewal Application	L05194	12811 Beamer Road Houston, Texas	Deny Radioactive Material License Renewal Application	1/04/2021

TRD-202100775  
 Barbara L. Klein  
 General Counsel  
 Department of State Health Services  
 Filed: February 24, 2021

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 Licensing Actions for Radioactive Materials

During the second half of January 2021, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Business Filing and Verification Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
EL PASO	IONETIX CORPORATION	L07100	EL PASO	00	01/22/21
GREGORY	GULF COAST GROWTH VENTURES LLC	L07102	GREGORY	00	01/28/21
THROUGHOUT TX	CLEAN HARBORS INDUSTRIAL SERVICES INC	L07101	BEAUMONT	00	01/27/21

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
ARLINGTON	COLUMBIA MEDICAL CENTER OF ARLINGTON SUBSIDIARY LP DBA MEDICAL CENTER OF ARLINGTON	L02228	ARLINGTON	90	1/27/21
BEAUMONT	R LELDON SWEET MD PA DBA OUTPATIENT CARDIOVASCULAR SERVICES	L05029	BEAUMONT	14	1/29/21
BORGER	WRB REFINING LP	L02480	BORGER	69	1/28/21
BROWNSVILLE	JAIME L SILVA MD PA	L05245	BROWNSVILLE	09	1/20/21
CONROE	CHEVRON PHILLIPS CHEMICAL COMPANY LP DBA DRILLING SPECIALTIES COMPANY A DIVISION OF CHEVRON PHILLIPS CHEMICAL COMPANY	L04825	CONROE	22	1/25/21

AMENDMENTS TO EXISTING LICENSES ISSUED:(Continued)

CORPUS CHRISTI	FLINT HILLS RESOURCES CORPUS CHRISTI LLC	L06360	CORPUS CHRISTI	08	1/27/21
DEER PARK	OXY VINYLs LP	L03200	DEER PARK	21	1/27/21
DEER PARK	SHELL OIL COMPANY	L04933	DEER PARK	34	1/20/21
DEER PARK	SHELL OIL COMPANY	L04554	DEER PARK	42	1/20/21
DUMAS	MOORE COUNTY HOSPITAL DISTRICT DBA MEMORIAL HOSPITAL	L03540	DUMAS	33	1/22/21
FANNIN	COLETO CREEK POWER LLC	L06950	FANNIN	02	1/27/21
FT WORTH	TEXAS HEALTH PHYSICIANS GROUP DBA TEXAS HEALTH HEART AND VASCULAR SPECIALISTS	L06468	FT WORTH	09	1/29/21
FT WORTH	PHYSICIANS SURGICAL CENTER OF FORT WORTH LLP	L05863	FT WORTH	12	1/29/21
HOUSTON	CHOPRA IMAGING CENTER INC DBA ADVANCED DIAGNOSTICS	L05566	HOUSTON	10	1/29/21
HOUSTON	ONESUBSEA PROCESSING INC	L05867	HOUSTON	14	1/28/21
HOUSTON	THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER	L06277	HOUSTON	55	1/25/21
HOUSTON	THE METHODIST HOSPITAL DBA HOUSTON METHODIST	L00457	HOUSTON	213	1/29/21
HUMBLE	RADIOMEDIX INC	L06990	HUMBLE	05	1/22/21
KINGWOOD	KPH CONSOLIDATION INC DBA KINGWOOD MEDICAL CENTER	L04482	KINGWOOD	33	1/20/21
LONGVIEW	TEXAS ONCOLOGY PA DBA LONGVIEW CANCER CENTER	L05017	LONGVIEW	23	1/26/21

AMENDMENTS TO EXISTING LICENSES ISSUED:(Continued)

MCKINNEY	COLUMBIA MEDICAL CENTER OF MCKINNEY SUBSIDIARY LP DBA MEDICAL CENTER OF MCKINNEY	L02415	MCKINNEY	50	1/29/21
RICHARDSON	TRUGLO INC	L05519	RICHARDSON	18	1/20/21
RICHARDSON	THE UNIVERSITY OF TEXAS AT DALLAS	L02114	RICHARDSON	66	1/20/21
SAN ANTONIO	SOUTH TEXAS RADIOLOGY IMAGING CENTERS	L00325	SAN ANTONIO	253	1/22/21
THROUGHOUT TX	RECON PETROTECHNOLOGIES OKLAHOMA INC	L06839	ALVARADO	05	1/20/21
THROUGHOUT TX	TEXAS DEPARTMENT OF STATE HEALTH SERVICES	L05865	AUSTIN	14	1/25/21
THROUGHOUT TX	ARA ST DAVIDS IMAGING LP	L05862	AUSTIN	104	1/26/21
THROUGHOUT TX	AUSTIN RADIOLOGICAL ASSOCIATION	L00545	AUSTIN	231	1/26/21
THROUGHOUT TX	NQS INSPECTION LTD	L06262	CORPUS CHRISTI	20	1/15/21
THROUGHOUT TX	IRISNDT INC	L06435	DEER PARK	27	1/22/21
THROUGHOUT TX	QUARTET ENGINEERS PLLC	L06879	HOUSTON	05	1/28/21
THROUGHOUT TX	ELEMENT MATERIALS TECHNOLOGY HOUSTON INC	L06451	HOUSTON	07	1/22/21
THROUGHOUT TX	TEXAS ONCOLOGY PA DBA TEXAS CANCER CENTER SHERMAN	L05019	SHERMAN	35	1/27/21
THROUGHOUT TX	HAIMO AMERICA INC	L06936	SPRING	09	1/29/21
THROUGHOUT TX	BRAUN INTERTEC CORPORATION	L06681	TYLER	17	1/28/21
THROUGHOUT TX	MOTHER FRANCES HOSPITAL REGIONAL HEALTH CARE CENTER DBA CHRISTUS MOTHER FRANCES HOSPITAL - TYLER	L01670	TYLER	217	1/25/21



AMENDMENTS TO EXISTING LICENSES ISSUED:(Continued)

THROUGHOUT TX	CHCA CLEAR LAKE LPDBA HCA HOUSTON HEALTHCARE CLEAR LAKE	L01680	WEBSTER	109	1/29/21
TYLER	TEXAS ONCOLOGY PA	L04788	TYLER	36	1/26/21

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
LAMESA	DAWSON COUNTY HOSPITAL DISTRICT DBA MEDICAL ARTS HOSPITAL	L06244	LAMESA	13	01/25/21
THROUGHOUT TX	LANGERMAN FOSTER ENGINEERINGCOMPANY LLC	L06382	WACO	07	01/28/21

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
DALLAS	ENVIRONMENTAL HEALTH CENTER – DALLAS	L05327	DALLAS	09	01/29/21
GEORGETOWN	PANASONIC CORPORATION OF NORTH AMERICA	L06729	GEORGETOWN	01	01/28/21
MIDLAND	ENVIROKLEAN PRODUCT DEVELOPMENT INC	L06350	MIDLAND	11	01/22/21

TRD-202100781  
 Barbara L. Klein  
 General Counsel  
 Department of State Health Services  
 Filed: February 24, 2021



**Texas Lottery Commission**

Scratch Ticket Game Number 2293 "CASH CELEBRATION!"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2293 is "CASH CELEBRATION!". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2293 shall be \$30.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2293.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except

for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 5X SYMBOL, 10X SYMBOL, \$50.00, \$75.00, \$100, \$300, \$500, \$1,000, \$3,000, \$30,000 and \$1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2293 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX

27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH

54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
5X SYMBOL	WINX5
10X SYMBOL	WINX10
\$50.00	FFTY\$
\$75.00	SVFV\$
\$100	ONHN
\$300	THHN
\$500	FVHN
\$1,000	ONTH
\$3,000	THTH
\$30,000	30TH
\$1,000,000	TPPZ

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 (2293), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2293-0000001-001.

H. Pack - A Pack of "CASH CELEBRATION!" Scratch Ticket Game contains 025 Scratch Tickets, packed in plastic shrink-wrapping and

fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 025 while the other fold will show the back of Ticket 001 and front of 025.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "CASH CELEBRATION!" Scratch Ticket Game No. 2293.

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 "CASH CELEBRATION!"

Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy (70) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES 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 seventy (70) 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 seventy (70) 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 seventy (70) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the seventy (70) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket

Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: A Ticket may have up to six (6) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., \$50 and 50).

H. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

I. KEY NUMBER MATCH: The "10X" (WINX10) 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 "CASH CELEBRATION!" Scratch Ticket Game prize of \$50.00, \$75.00, \$100, \$300 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$75.00, \$100, \$300 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 "CASH CELEBRATION!" Scratch Ticket Game prize of \$3,000, \$30,000 or \$1,000,000, 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 "CASH CELEBRATION!" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "CASH CELEBRATION!" 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 "CASH CELEBRATION!" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "CASH CELEBRATION!" Scratch Ticket may be entered into one (1) of six (6) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 9,000,000 Scratch Tickets in the Scratch Ticket Game No. 2293. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2293 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$50.00	1,260,000	7.14
\$75.00	360,000	25.00
\$100	450,000	20.00
\$300	174,000	51.72
\$500	14,400	625.00
\$3,000	250	36,000.00
\$30,000	20	450,000.00
\$1,000,000	4	2,250,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.98. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2293 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2293, 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-202100776  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: February 24, 2021



Scratch Ticket Game Number 2312 "MILLIONAIRE CLUB"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2312 is "MILLIONAIRE CLUB". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2312 shall be \$50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2312.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, GOLD BAR SYMBOL, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, \$50.00, \$75.00, \$100, \$150, \$200, \$250, \$300, \$500, \$1,000, \$2,000, \$10,000 and \$1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 2312 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFO
26	TWSX
27	TWSV
28	TWET

29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV

56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
GOLD BAR SYMBOL	WIN\$
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
\$50.00	FFTY\$
\$75.00	SVFV\$
\$100	ONHN
\$150	ONFF
\$200	TOHN
\$250	TOFF
\$300	THHN
\$500	FVHN
\$1,000	ONTH
\$2,000	TOTH
\$10,000	10TH
\$1,000,000	TPPZ

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 (2312), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2312-0000001-001.

H. Pack - A Pack of the "MILLIONAIRE CLUB" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 020 will both 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 "MILLIONAIRE CLUB" Scratch Ticket Game No. 2312.

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 "MILLIONAIRE CLUB" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eighty-eight (88) Play Symbols. CLUB BONUS: If a player reveals 2 matching prize amounts in the same CLUB BONUS, the player wins that amount. KEY NUMBER MATCH: If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "GOLD BAR" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES 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 eighty-eight (88) 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 eighty-eight (88) 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 eighty-eight (88) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty-eight (88) 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. GENERAL: The \$50 Prize Symbol will only appear on winning Tickets in which the \$50 prize is part of a winning pattern.

D. CLUB BONUS: A non-winning Prize Symbol in a CLUB BONUS play area will never match a winning Prize Symbol in another CLUB BONUS play area.

E. CLUB BONUS: A Ticket may have up to two (2) matching non-winning Prize Symbols across the four (4) CLUB BONUS play areas.

F. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

G. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

H. KEY NUMBER MATCH: A Ticket may have up to six (6) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

I. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

J. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., \$50 and 50).

K. KEY NUMBER MATCH: The "GOLD BAR" (WINS) Play Symbol may appear multiple times on intended winning Tickets, unless restricted by other parameters, play action or prize structure.

L. KEY NUMBER MATCH: The "2X" (DBL) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

M. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

N. KEY NUMBER MATCH: The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

O. KEY NUMBER MATCH: The "20X" (WINX20) 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 "MILLIONAIRE CLUB" Scratch Ticket Game prize of \$75.00, \$100, \$150, \$200, \$250 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and 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 \$75.00, \$100, \$150, \$200, \$250 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MILLIONAIRE CLUB" Scratch Ticket Game prize of \$2,000, \$10,000 or \$1,000,000, 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. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "MILLIONAIRE CLUB" 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 "MILLIONAIRE CLUB" 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 6,600,000 Scratch Tickets in Scratch Ticket Game No. 2312. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2312 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$75.00	660,000	10.00
\$100	495,000	13.33
\$150	330,000	20.00
\$200	237,050	27.84
\$250	110,000	60.00
\$500	47,300	139.53
\$2,000	2,310	2,857.14
\$10,000	200	33,000.00
\$1,000,000	4	1,650,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.51. 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. 2312 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. 2312, 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-202100774  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: February 24, 2021

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## North Central Texas Council of Governments

### Request for Proposals - Transit Cooperative Vehicle Procurement

The North Central Texas Council of Governments (NCTCOG) is requesting proposals from qualified contractor(s) to design, manufacture, and deliver Americans with Disabilities Act (ADA) Accessible, Transit Vehicles to support urban transportation services for the following Federal Transit Administration (FTA) grant programs: Urbanized Area Formula Program and the Bus and Bus Facilities Program.

Proposals must be received no later than 5:00 p.m., Central Time, on Friday April 2, 2021, to Lorena Carrillo, Transportation Planner III, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to [TransRFPs@nctcog.org](mailto:TransRFPs@nctcog.org). The Request for Proposals will be available at [www.nctcog.org/rfp](http://www.nctcog.org/rfp) by the close of business on Friday, March 5, 2021.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202100769  
R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: February 24, 2021

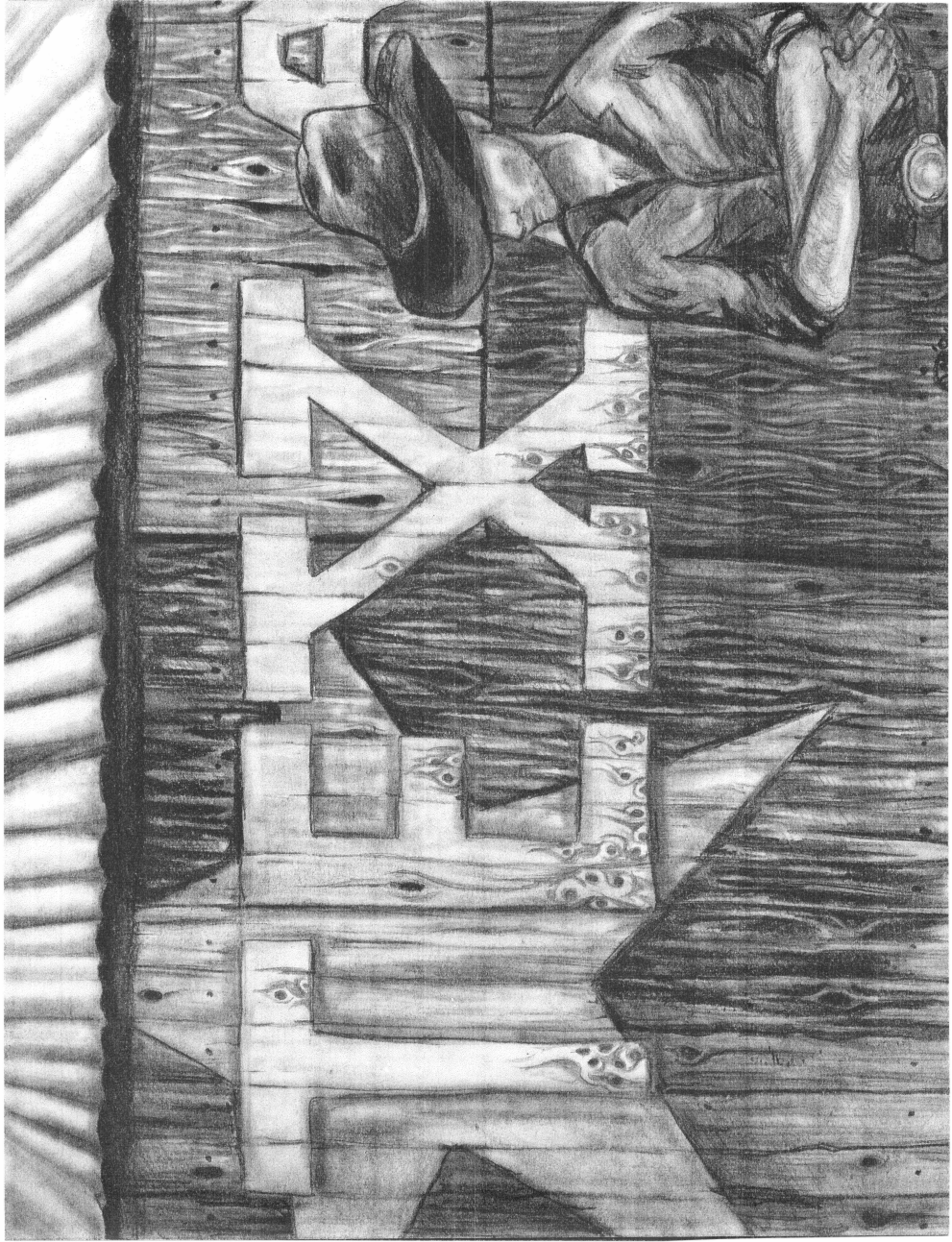
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**Texas Parks and Wildlife Department**

Correction of Error

The Texas Parks and Wildlife Department adopted the repeal of 31 TAC §§57.112 - 57.137 in the January 22, 2021, issue of the *Texas Register* (46 TexReg 576). Due to an error by the Texas Register, the range of rules being repealed was listed incorrectly as 31 TAC §§57.112 - 57.128. The correct range of rules being repealed is 31 TAC §§57.112 - 57.137.

TRD-202100735

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## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “43 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 43 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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