TEXAS REGISTER

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In This Issue

THE GOVERNOR

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

Appointments

Appointments for April 1, 2021

Appointed to the Public Utility Commission of Texas, for a term to expire September 1, 2025, James W. "Will" McAdams of Cedar Park, Texas (replacing Shelly L. Botkin of Austin, who resigned).

Appointed to the Texas Optometry Board, for a term to expire January 31, 2027, Ronald L. "Ron" Hopping, O.D. of Friendswood, Texas (Dr. Hopping is being reappointed).

Appointed to the Texas Optometry Board, for a term to expire January 31, 2027, Carey A. Patrick, O.D. of Allen, Texas (Dr. Patrick is being reappointed).

Appointed to the Texas Optometry Board, for a term to expire January 31, 2027, Rene D. Pena of El Paso, Texas (Mr. Pena is being reappointed).

Appointments for April 6, 2021

Appointed to the Texas State Board of Acupuncture Examiners, for a term to expire January 31, 2027, Maria M. Garcia of Plano, Texas (Ms. Garcia is being reappointed).

Appointed to the Texas State Board of Acupuncture Examiners, for a term to expire January 31, 2027, Samantha A. Gonzalez of San Antonio, Texas (replacing Dawn Lin of Sugar Land, whose term expired).

Greg Abbott, Governor

TRD-202101477

♦ ♦ ♦

Executive Order GA-35

Relating to COVID-19 vaccines and the protection of Texans' private health information.

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

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

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

WHEREAS, the U.S. Food and Drug Administration (FDA) has granted emergency use authorizations for COVID-19 vaccines that are not yet FDA-approved, pursuant to the Project BioShield Act of 2004, 21 U.S.C. § 360bbb-3; and

WHEREAS, that federal statute expressly recognizes that each individual has "the option to accept or refuse administration of the product" under an emergency use authorization, 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III); and

WHEREAS, receiving one of these COVID-19 vaccines under an emergency use authorization, while strongly encouraged, is always voluntary in Texas and will never be mandated by the government; and

WHEREAS, Texas has administered over 12 million doses of the COVID-19 vaccines, and every person who is at least 16 years old is now eligible to receive a shot if they so choose; and

WHEREAS, millions more Texans have already recovered from COVID-19 and thus acquired some degree of immunity; and

WHEREAS, some Texans are still waiting to receive a COVID-19 vaccine, while others will opt out altogether due to a religious objection, a health concern, or some other reason; and

WHEREAS, an individual's COVID-19 vaccination status is private health information, and no governmental entity should compel disclosure of this information by mandating a so-called "vaccine passport" for COVID-19 or by otherwise conditioning receipt of services on an individual's COVID-19 vaccination status; and

WHEREAS, the Constitution does not empower the federal government to mandate nationwide vaccine passports for COVID-19, and Texas will not impose such vaccine passports with the police power that is reserved to the States under our system of federalism; and

WHEREAS, I request that the 87th Legislature address this important privacy issue in the current legislative session; and

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

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

WHEREAS, under Section 418.016(a), the "governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance with the provisions ... would in any way prevent, hinder, or delay necessary action in coping with a disaster;" and

WHEREAS, under Section 418.018(c), the "governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area;"

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

1. I hereby suspend Section 81.082(f)(1) of the Texas Health and Safety Code to the extent necessary to ensure that no governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization.

2. State agencies and political subdivisions shall not adopt or enforce any order, ordinance, policy, regulation, rule, or similar measure that requires an individual to provide, as a condition of receiving any service or entering any place, documentation regarding the individual's vaccination status for any COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.085(i) of the Texas Health and Safety Code to the extent necessary to enforce this prohibition. This paragraph does not apply to any documentation requirements necessary for the administration of a COVID-19 vaccine.

3. Any public or private entity that is receiving or will receive public funds through any means, including grants, contracts, loans, or other disbursements of taxpayer money, shall not require a consumer to provide, as a condition of receiving any service or entering any place, documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization. No consumer may be denied entry to a facility financed in whole or in part by public funds for failure to provide documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization.

4. Nothing in this executive order shall be construed to limit the ability of a nursing home, state supported living center, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine.

5. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.

This executive order does not supersede Executive Orders GA-10, GA-13, or GA-34. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor.

Given under my hand this the 5th day of April, 2021.

Greg Abbott, Governor

TRD-202101430

♦ ♦ ♦

Proclamation 41-3811

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

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

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

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 5th day of April, 2021.

Greg Abbott, Governor

TRD-202101427

♦ ♦ ♦

Proclamation 41-3812

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

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

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

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or

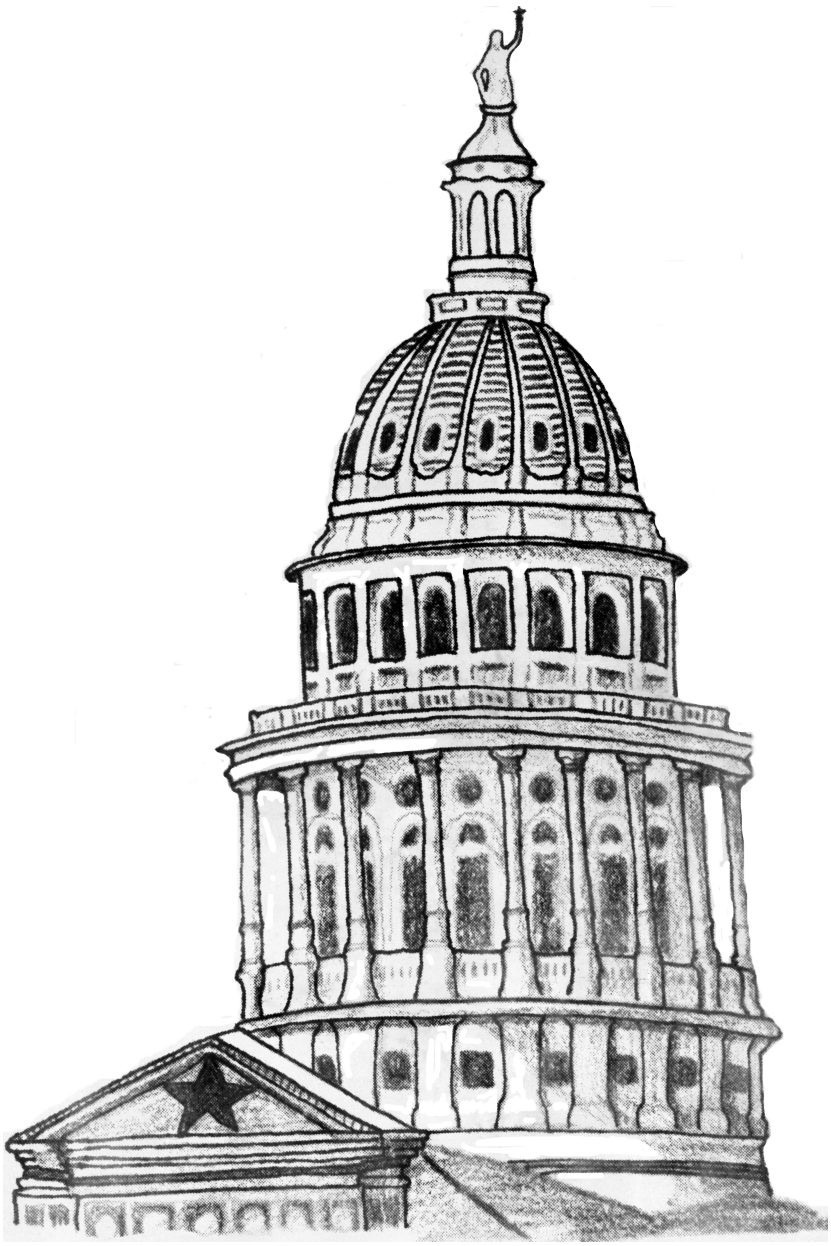
rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 5th day of April, 2021.

Greg Abbott, Governor

TRD-202101428



THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0402-KP

Requestor:

The Honorable James White

Chair, House Committee on Homeland Security & Public Safety

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether access to a government facility can be conditioned upon obtaining a vaccine (RQ-0402-KP)

Briefs requested by May 5, 2021

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

TRD-202101438
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: April 6, 2021

♦ ♦ ♦

Opinions

Opinion No. KP-0364

The Honorable Brett W. Ligon

Montgomery County District Attorney

207 West Phillips, 2nd Floor

Conroe, Texas 77301

The Honorable B.D. Griffin

Montgomery County Attorney

501 North Thompson, Suite 300

Conroe, Texas 77301

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

(RQ-0381-KP)

S U M M A R Y

Section 521.021 of the Transportation Code prohibits a person, unless expressly exempted, from operating a motor vehicle on a publicly maintained way any part of which is open to the public for vehicular travel unless the person holds a driver's license. Sections 551.403 and 551.404 of the Code, which authorize a person to operate a golf cart in certain locations, do not exempt such persons from the driver's license-holding requirement of section 521.021.

Opinion No. KP-0365

The Honorable Charles Perry

Chair, Committee on Water and Rural Affairs

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

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

S U M M A R Y

Chapter 387 of the Local Government Code provides for county assistance districts, and subsection 387.003(b) establishes the boundaries for those districts. A court would likely conclude that subsection 387.003(b) required Ector County to include the City of Odessa's extraterritorial jurisdiction in the Ector County's county assistance district's proposed boundaries.

Construing subsection 387.003(b-1) to require notice to a city only when a proposed district includes the incorporated territory of the city, the County's express exclusion of Odessa's municipal limits in its ballot language means that no territory of a municipality was included in the proposed district. Accordingly, a court would likely conclude that subsection 387.003(b-1) required no notice.

Neither statute nor equitable principles of law such as the contract with the voters or administrative action by the Texas Comptroller provide a basis to conclude that the District's boundaries should exclude future land annexations by Odessa.

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

TRD-202101437

Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: April 6, 2021

♦ ♦ ♦

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 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 558. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

SUBCHAPTER I. RESPONSE TO COVID-19 AND PANDEMIC-LEVEL COMMUNICABLE DISEASE

26 TAC §558.950

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 558, Licensing Standards for Home and Community Support Services Agencies, Subchapter I, Response to COVID-19 and Pandemic-Level Communicable Disease, new §558.950, concerning an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in a hospice inpatient unit. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect clients admitted to a hospice inpatient unit and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require limited indoor and outdoor visitation in a hospice inpatient unit. The purpose of the new rule is to describe the requirements related to such visits.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and Texas Health and Safety Code §142.012. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §142.012 requires the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 142 and to adopt rules prescribing minimum standards to protect the health and safety of clients admitted to hospice inpatient units.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 142, concerning Home and Community Support Services Agencies.

§558.950. Hospice Inpatient Units COVID-19 Response--Reopening Visitation.

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

(1) Closed window visit--A personal visit between a client and visitor during which the client and personal visitor are separated by a closed window and the visitor does not enter the building. A closed window visit is permitted at all hospice inpatient units and for all clients of a hospice inpatient unit.

(2) COVID-19 negative--The status of a person who has either tested negative for COVID-19, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus since the negative test.

(3) COVID-19 positive--The status of a person who has tested positive for COVID-19 and does not yet meet Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

(4) End-of-life visit--A personal visit between a visitor and a client receiving hospice services who is at or near the end of life and in the later stages of a terminal illness. An end-of-life visit is permitted in all hospice inpatient units and for all clients of a hospice inpatient unit at the end of life.

(5) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, clergy member, private personal caregiver or court appointed guardian, who is at least 18 years old and has been designated by a client or legal representative to provide regular care and support to the client.

(6) Essential caregiver visit--A personal visit between a client and an essential caregiver. An essential caregiver visit is permitted in all hospice inpatient units for all clients with any COVID-19 status.

(7) Facility-acquired COVID-19--A COVID-19 infection that is acquired after admission to a hospice inpatient unit and was not present at the end of the 14-day quarantine period following admission or readmission.

(8) Family education visit--A visit between a family education visitor and a client who is in the hospice inpatient unit for an intensive stay for the purpose of hospice staff educating the family education visitor on proper equipment utilization or care of the client after discharge from the unit.

(9) Family education visitor--An individual (who may or may not be an essential caregiver) designated by a client who provides regular care and support to the client while the client is in the hospice inpatient unit for an intensive stay for the purpose of learning proper equipment utilization or care of the client after discharge from the unit.

(10) Indoor visit--A personal visit between a client and one or more personal visitors that occurs in-person in a dedicated indoor space.

(11) Open window visit--A personal visit between a client and visitor during which the client and personal visitor are separated by an open window.

(12) Outbreak--One or more laboratory-confirmed cases of COVID-19 identified in either a client or paid or unpaid staff.

(13) Outdoor visit--A personal visit between a client and one or more personal visitors that occurs in-person in a dedicated outdoor space.

(14) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, family members or friends of clients at the end of life, family education visitors, and designated essential caregivers.

(15) Persons with legal authority to enter--Law enforcement officers and government personnel performing their official duties.

(16) Physical distancing--Maintaining a minimum of six feet between persons, avoiding gathering in groups in accordance with state and local orders, and avoiding unnecessary physical contact.

(17) Plexiglass indoor visit--A personal visit between a client and one or more personal visitors, during which the client and the visitor are both inside the hospice inpatient unit but within a booth, separated by a plexiglass barrier.

(18) PPE--Personal protective equipment.

(19) Providers of essential services--Contract doctors or nurses, hospice employees and contractors, hospice physicians, nurses, hospice aides, social workers, therapists, spiritual counselors, contract professionals, clergy members and spiritual counselors whose services are necessary to ensure client health and safety.

(20) Salon services visit--A personal visit between a client and a salon services visitor.

(21) Salon services visitor--A barber, beautician, or cosmetologist providing hair care or personal grooming services to a client.

(22) Unknown COVID-19 status--The status of a person who is a new admission or readmission, has spent one or more nights away from the hospice inpatient unit, has had known exposure or close contact with a person who is COVID-19 positive, or who is exhibiting symptoms of COVID-19 while awaiting test results.

(23) Vehicle parade--A personal visit between a client and one or more personal visitors, during which the client remains outdoors on the hospice inpatient unit's property and a personal visitor drives past in a vehicle.

(b) A hospice agency operating a hospice inpatient unit must screen all visitors prior to allowing them to enter the hospice inpatient unit in accordance with subsection (c) of this section, except emergency services personnel entering the unit or hospice inpatient unit campus in an emergency. Visitor screenings must be documented in a log kept at the entrance to the hospice inpatient unit, which must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(c) Visitors who meet any of the following screening criteria must leave the hospice inpatient unit and reschedule the visit:

(1) fever, defined as a temperature of 100.4 Fahrenheit and above, or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) other signs or symptoms of COVID-19, including chills, new or worsening cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(3) any other signs and symptoms as outlined by the CDC in Symptoms of Coronavirus at cdc.gov;

(4) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, regardless of whether the person is fully vaccinated; or

(5) has tested positive for COVID-19 in the last 10 days.

(d) A hospice agency operating a hospice inpatient unit must allow persons providing critical assistance, including essential caregivers and family education visitors and persons with legal authority to enter, to enter the unit if they pass the screening in subsection (c) of this section.

(e) A person providing critical assistance who has had contact with a person with COVID-19 positive or COVID-19 unknown status, but does not meet the CDC definition of close contact or unprotected exposure, must not be denied entry to the hospice inpatient unit unless the person providing critical assistance does not pass the screening criteria described in subsection (c)(1) - (3) and (5) of this section, or any other screening criteria based on CDC guidance.

(f) If the hospice agency has offered a complete series of a one- or two-dose COVID-19 vaccine to clients and staff and documented each client's choice to vaccinate or not vaccinate, the hospice agency operating the hospice inpatient unit must allow essential caregiver visits, family education visits, end-of-life visits, indoor visits, and outdoor visits as required in this subsection. If a hospice inpatient unit fails to comply with the requirements of this subsection, HHSC may take action in accordance with §558.601 of this chapter (relating to Enforcement Actions). In accordance with §558.602 of this chapter (relating to Administrative Penalties), HHSC may assess an administrative penalty of $500 without providing the hospice agency with an opportunity to correct the violation if HHSC determines that the hospice agency willfully violated a client's right to visitation.

(1) A hospice agency operating a hospice inpatient unit may not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the facility.

(2) The following requirements apply to essential caregiver visits.

(A) There may be up to two permanently designated essential caregiver visitors per client.

(B) Up to two essential caregivers may visit a client at the same time.

(C) The visit may occur outdoors, in the client's bedroom, or in another area in the hospice inpatient unit that limits the visitor movement through the unit and interaction with other clients, family education visitors, and staff.

(D) Essential caregiver visitors do not have to maintain physical distancing between themselves and the client they are visiting but must maintain physical distancing between themselves and all other clients, family education visitors, and staff.

(E) The client must wear a facemask or face covering over both the mouth and nose, if tolerated, throughout the visit.

(F) The hospice agency must develop and enforce essential caregiver visitation policies and procedures, which include:

(i) a written agreement that the essential caregiver understands and agrees to follow the applicable policies, procedures, and requirements;

(ii) training each essential caregiver on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(iii) a requirement that the essential caregiver must wear a facemask or face covering and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy while in the hospice inpatient unit;

(iv) expectations regarding using only designated entrances and exits as directed, if applicable; and

(v) limiting visitation to the area designated by the hospice agency in accordance with subparagraph (C) of this paragraph.

(G) The hospice agency must:

(i) inform the essential caregiver of applicable policies, procedures, and requirements;

(ii) approve the essential caregiver's facemask or face covering and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy, or provide an approved facemask and other appropriate PPE;

(iii) maintain documentation of the essential caregiver's agreement to follow the applicable policies, procedures, and requirements;

(iv) maintain documentation of the essential caregiver's training as required in subparagraph (F)(ii) of this paragraph;

(v) maintain documentation of the identity of each essential caregiver in the client's record and verify the identity of the essential caregiver at the time of each visit; and

(vi) maintain a record of each essential caregiver visit, including:

(I) the date and time of the arrival and departure of the essential caregiver visitor;

(II) the name of the essential caregiver visitor;

(III) the name of the client being visited; and

(IV) an attestation that the identity of the essential caregiver visitor was confirmed; and

(vii) prevent visitation by the essential caregiver visitor if the essential caregiver visitor has signs and symptoms of COVID-19 or an active COVID-19 infection.

(H) The hospice agency may cancel the essential caregiver visit if the essential caregiver fails to comply with the agency's policy regarding essential caregiver visits or applicable requirements in this section.

(3) To permit indoor visitation a hospice agency operating a hospice inpatient unit must:

(A) have separate areas, which include enclosed rooms such as bedrooms or activities rooms, units, wings, halls, or buildings, designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status client and family education visitor cohorts; and

(B) ensure separate staff are designated to work with only one client and family education visitor cohort and the designation does not change from one day to another.

(4) A hospice agency must provide instructional signage throughout the unit and proper visitor education regarding:

(A) the signs and symptoms of COVID-19;

(B) infection control precautions; and

(C) other applicable practices (e.g., use of facemasks and other appropriate PPE, specified entries and exits, routes to designated visitation areas, and hand hygiene).

(5) The following limits apply to all visitation allowed under this section.

(A) Visitation appointments must be scheduled to allow time for cleaning and sanitization of the visitation area between visits.

(B) Except as provided in subparagraph (C) of this paragraph, indoor visits and outdoor visits are permitted only for clients who are COVID-19 negative.

(C) Essential caregiver visits and end-of-life visits are permitted for clients who have COVID-19 negative, COVID-19 positive, or unknown COVID-19 status.

(D) A client may choose to have close or personal contact with their visitor during the visit. The visitor must maintain physical distancing between themselves and all other persons in the hospice inpatient unit.

(E) Visits are permitted where adequate space is available as necessary to ensure physical distancing between visitation groups and safe infection prevention and control measures, including the client's room. The hospice agency must limit the movement of the visitor through the unit to ensure interaction with other persons in the unit is minimized.

(F) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit.

(G) The hospice agency must encourage the client to wear a facemask over both the mouth and nose, if tolerated, throughout

the personal visit. The client may remove their facemask to eat or drink during the personal visit.

(H) A hospice agency must ensure equal access by all clients to visitors and essential caregivers.

(I) Cleaning and disinfecting the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit.

(J) A hospice agency operating a hospice inpatient unit must ensure a comfortable and safe outdoor visitation area for outdoor visits, considering outside air temperature and ventilation.

(K) A hospice agency operating a hospice inpatient unit must provide hand washing stations, or hand sanitizer, to the visitor and client before and after visits.

(L) The visitor and the client must practice hand hygiene before and after the visit.

(6) The following applies to family education visits under this section.

(A) The hospice agency operating a hospice inpatient unit must develop and enforce family education visit policies and procedures which must address the requirements in this subsection.

(B) A hospice inpatient unit client may designate up to three family education visitors. An individual may be designated as both a family education visitor and an essential caregiver.

(C) A family education visit is permitted for clients who are COVID-19 negative, COVID-19 positive, and clients with unknown COVID-19 status.

(D) The hospice agency must provide appropriate PPE to the family education visitor for use during the entirety of each family education visit, including provision of replacement PPE if the equipment becomes soiled, damaged, or otherwise ineffective.

(E) A hospice agency operating a hospice inpatient unit may not require a family education visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the hospice inpatient unit.

(F) The hospice agency may not require COVID-19 vaccination prior to family education visits.

(G) The hospice agency must develop a written agreement that the family education visitor understands and agrees to follow the applicable policies, procedures, and requirements.

(H) The hospice agency must provide training for each family education visitor on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette.

(I) The family education visitor must wear a surgical or N95 respirator, and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy, while in the hospice inpatient unit.

(J) The family education visitor must:

(i) sign an agreement to leave the hospice inpatient unit at the appointed time, unless otherwise approved by the hospice agency;

(ii) self-monitor for signs and symptoms of COVID-19; and

(iii) not participate in visits if the designated family education visitor has signs and symptoms of COVID-19, active COVID-19 infection, or other communicable diseases.

(K) The hospice agency may cancel the family education visit if the family education visitor fails to comply with the agency's policy regarding visitation or other applicable requirements in this section.

(L) If the hospice agency must cancel the family education visit, the hospice agency must discuss the situation with the interdisciplinary team and arrange for family education at the client's home or independent location in accordance with §558.288 of this chapter (relating to Coordination of Services) and the client's plan of care.

(g) If the hospice agency operating a hospice inpatient unit has not offered a complete series of a one- or two-dose COVID-19 vaccine to clients and staff, the hospice must seek a visitation designation and allow limited personal visitation in accordance with this subsection. A visitation designation is not required for, and a hospice inpatient unit must allow, closed window visits, end-of-life visits, family education visits and essential caregiver visits. If a hospice inpatient unit fails to comply with the requirements of this subsection, HHSC may take action in accordance with §558.601 of this chapter. In accordance with §558.602 of this chapter, HHSC may assess an administrative penalty of $500 without providing the hospice agency with an opportunity to correct the violation.

(1) A hospice agency may not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the hospice inpatient unit.

(2) The following requirements apply to essential caregiver visits.

(A) There may be up to two permanently designated essential caregivers per client.

(B) Only one essential caregiver visitor at a time may visit a client.

(C) The essential caregiver visit may occur outdoors, in the client's bedroom, or in another area in the hospice inpatient unit that limits visitor movement through the inpatient unit and interaction with other clients, family education visitors, and staff.

(D) Essential caregiver visitors do not have to maintain physical distancing between themselves and the client they are visiting but must maintain physical distancing between themselves and all other clients, family education visitors, and staff.

(E) The client must wear a facemask or face covering over both the mouth and nose, if tolerated, throughout the visit.

(F) The hospice agency must develop and enforce essential caregiver visitation policies and procedures, which include:

(i) a written agreement that the essential caregiver understands and agrees to follow the applicable policies, procedures, and requirements;

(ii) training each essential caregiver on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(iii) a requirement that the essential caregiver must wear a facemask and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy while in the unit;

(iv) expectations regarding using only designated entrances and exits as directed, if applicable; and

(v) limiting visitation to the area designated by the hospice agency.

(G) A hospice agency operating an inpatient hospice unit must:

(i) inform the essential caregiver visitor of applicable policies, procedures, and requirements;

(ii) approve the essential caregiver visitor's facemask and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy, or provide an approved facemask and other appropriate PPE;

(iii) maintain documentation of the essential caregiver's agreement to follow the applicable policies, procedures, and requirements;

(iv) maintain documentation of the essential caregiver's training;

(v) maintain documentation of the identity of each essential caregiver visitor in the client's records and verify the identity of the essential caregiver visitor at the time of each visit;

(vi) maintain a record of each essential caregiver visit, including:

(I) the date and time of the arrival and departure of the essential caregiver visitor;

(II) the name of the essential caregiver visitor;

(III) the name of the client being visited; and

(IV) an attestation that the identity of the essential caregiver visitor was verified; and

(vii) prevent visitation by the essential caregiver if the essential caregiver has signs and symptoms of COVID-19 or an active COVID-19 infection.

(H) The hospice agency may cancel the essential caregiver visit if the essential caregiver fails to comply with the hospice agency's policy regarding essential caregiver visits or applicable requirements in this section.

(3) To allow limited personal visitation, a hospice agency operating a hospice inpatient unit must submit a completed HHSC Long-term Care Regulation (LTCR) Form 7004, COVID-19 Reopening Visitation Status Attestation, including a map of the hospice inpatient unit indicating which areas, units, wings, halls, or buildings accommodate COVID-19 negative, COVID-19 positive, and unknown COVID-19 status clients, to the Regional Director in the LTCR Region where the hospice inpatient unit is located. A hospice inpatient unit with previous approval for visitation does not have to submit Form 7004 and a hospice inpatient unit map, unless the previous visitation approval has been withdrawn, rescinded, or cancelled. To receive a visitation designation, a hospice agency must demonstrate that:

(A) there are separate areas, which include enclosed rooms such as bedrooms or activities rooms, units, wings, halls, or buildings designated for client cohorts who are COVID-19 positive, COVID-19 negative, or unknown COVID-19 status;

(B) separate dedicated staff are working exclusively in the separate areas, units, wings, halls, or buildings for clients who are COVID-19 positive, COVID-19 negative, or unknown COVID-19 status;

(C) there have been no confirmed COVID-19 cases for at least 14 consecutive days in staff working in the area, unit, wing, hall, or building that accommodates clients who are COVID-19 negative;

(D) there have been no facility-acquired COVID-19 confirmed cases for at least 14 consecutive days in clients in the COVID-19 negative area, unit, wing, hall, or building;

(E) staff are designated to work with only one client cohort and the designation does not change from one day to another;

(F) evidence upon HHSC request of daily screening for staff and clients, if a testing strategy is not used; and

(G) if hospice inpatient unit has had previous cases of COVID-19 in staff or clients in the area, unit, wing, hall, or building that accommodates clients who are COVID-19 negative, LTCR may conduct a verification survey to confirm the following:

(i) all staff and clients in the COVID-19 negative area, unit, wing, hall, or building have fully recovered;

(ii) the hospice agency has adequate staffing to continue care for all clients and administer visits permitted by this section; and

(iii) the hospice agency is in compliance with infection control requirements and emergency rules related to COVID-19.

(4) A hospice inpatient unit that does not meet the criteria in paragraph (3) of this subsection to receive a visitation designation, must:

(A) permit closed window visits and visits by persons providing critical assistance, including essential caregiver visits and end-of-life visits;

(B) develop and implement a plan describing the steps the hospice agency intends to take in order to meet the criteria; and

(C) submit the plan to the Regional Director in the LTCR Region where the hospice agency is located within five business days of submitting the form or of receiving notification from HHSC that the hospice agency was not approved for visitation designation.

(5) A hospice agency operating a hospice inpatient unit may request exemption from requirements of this section that a hospice inpatient unit with a visitation designation allow certain personal visits. A hospice agency operating an inpatient unit may not request, and HHSC will not approve, an exemption from closed window visits or visits by persons providing critical assistance, including essential caregivers, family education visitors, and end-of-life visits. If the hospice agency determines it is unable to meet one or more of the other visitation requirements of this section, the hospice agency must request exemption from that requirement and explain its inability to meet the visitation requirement on the COVID-19 Status Attestation Form. HHSC will notify the hospice agency if a temporary exemption for a specific visit type is granted and the time period for exemption.

(6) A hospice agency operating a hospice inpatient unit must provide instructional signage throughout the hospice inpatient unit and proper visitor education regarding:

(A) the signs and symptoms of COVID-19;

(B) infection control precautions; and

(C) other applicable practices (e.g., use of facemask or other appropriate PPE, specified entries and exits, routes to designated visitation areas, and hand hygiene).

(7) A hospice agency operating a hospice inpatient unit with visitation designation must allow outdoor visits, open window visits, vehicle parades, and plexiglass indoor visits involving clients and personal visitors. The following requirements apply to all vis-

itation required under this subsection, and other visitation types as specified:

(A) Open window visits, vehicle parades, outdoor visits, and plexiglass indoor visits are permitted as can be accommodated by the hospice agency only for clients who are COVID-19 negative.

(B) Closed window visits, end-of-life visits, and essential caregiver visits are permitted for clients who are COVID-19 negative, COVID-19 positive, or unknown COVID-19 status as can be accommodated by the hospice agency.

(C) Physical contact between clients and visitors is prohibited, except for essential caregiver visits, family education visitors, and end-of-life visits.

(D) Visits are permitted only where adequate space is available that meets the criteria and when adequate staff are available to comply with this section. Essential caregiver visits, family education visitors, and end-of-life visits can take place in the client's room or other area of the hospice inpatient unit separated from other clients. The hospice inpatient unit must limit the movement of the visitors through the unit to ensure interaction with other clients and family education visitors is minimized.

(E) The personal visitor must wear a facemask or approved face covering over both the mouth and nose throughout the visit, except visitors participating in a vehicle parade or closed window visit.

(F) The client must wear a facemask over both the mouth and nose, if tolerated, throughout the visit.

(G) The hospice inpatient unit staff must remind personal visitors and clients about physical distancing of at least six feet and face mask or face covering requirements either verbally or with a notice posted visible to personal visitors or handed to them. The hospice agency must limit the number of visitors and clients in the visitation area as needed to ensure physical distancing is maintained. Essential caregiver, family education visitors, and end-of-life visitors do not have to maintain physical distancing between themselves and the client they are visiting, but they must maintain physical distancing between themselves and all other clients, staff, and other visitors.

(H) Cleaning and disinfecting the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit. The hospice inpatient unit must schedule visits as necessary to allow time for sanitization between visits.

(I) The hospice inpatient unit must ensure a comfortable and safe outdoor visiting area for outdoor visits, open window visits, and vehicle parades, considering outside air temperatures, weather conditions, and ventilation.

(J) For outdoor visits, the hospice inpatient unit must designate an outdoor area for visitation that is separated from clients and limits the ability of the visitor to interact with clients.

(K) A hospice inpatient unit must provide hand washing stations or hand sanitizer to the visitor and client before and after visits, except visitors participating in a vehicle parade or closed window visit.

(L) The visitor and the client must practice hand hygiene before and after the visit, except visitors participating in a vehicle parade or closed window visit.

(8) The following requirements apply to vehicle parades.

(A) Visitors must remain in their vehicles throughout the parade.

(B) The hospice inpatient unit must encourage physical distancing of at least six feet between clients throughout the parade.

(C) The hospice inpatient unit must prohibit clients from being closer than 10 feet to the vehicles for safety reasons.

(D) The hospice inpatient unit must encourage clients to wear a facemask or face covering over both the mouth and nose, if tolerated, throughout the parade.

(9) The following requirements apply to plexiglass indoor visits.

(A) The plexiglass barrier must be installed in an area where it does not impede a means of egress, does not impede or interfere with any fire safety equipment or system, and minimizes access to the rest of the hospice inpatient unit and contact between personal visitors and other clients.

(B) Prior to using the booth, the hospice inpatient unit must submit for approval a photo of the plexiglass visitation booth and its location in the hospice inpatient unit to the Life Safety Code Program Manager in the LTCR Region in which the hospice inpatient unit is located and must receive approval from HHSC.

(C) The visit must be supervised by hospice agency staff for the duration of the visit.

(D) The client must wear a facemask over both the mouth and nose, if tolerated, throughout the visit.

(E) The personal visitor must wear a facemask over both the mouth and nose throughout the visit.

(F) The hospice agency shall limit the number of visitors and clients in the visitation area as needed to ensure physical distancing.

(h) A hospice agency operating a hospice inpatient unit may allow a salon services visitor to enter the hospice inpatient unit to provide services to a client only if:

(1) the salon services visitor passes the screening described in subsection (c) of this section;

(2) the salon services visitor agrees to comply with the most current version of the Minimum Standard Health Protocols - Checklist for Cosmetology Salons/Hair Salons, located on website: open.texas.gov; and

(3) the requirements for visitation are met.

(i) The following requirements apply to salon services visits.

(1) A salon services visit may be permitted for all clients with COVID-19 negative status.

(2) The visit may occur outdoors, in the client's bedroom, or in another area in the hospice inpatient unit that limits visitor movement through the unit and interaction with other persons in the location.

(3) Salon services visitors do not have to maintain physical distancing between themselves and each client for whom they are providing services, but they must maintain physical distancing between themselves and all other persons in the hospice inpatient unit.

(4) The client must wear a facemask or face covering over both the mouth and nose, if tolerated, throughout the visit.

(5) The client must develop and enforce salon services visitation policies and procedures, which include:

(A) a testing strategy for salon services visitors;

(B) a written agreement that the salon services visitor understands and agrees to follow the applicable policies, procedures, and requirements;

(C) training each salon services visitor on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(D) the salon services visitor must wear a facemask and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy while in the unit.

(E) expectations regarding using only designated entrances and exits as directed; and

(F) limiting visitation to the area designated by the hospice agency.

(6) The hospice agency operating a hospice inpatient unit must:

(A) inform the salon services visitor of applicable policies, procedures, and requirements;

(B) approve the visitor's facemask or provide an approved facemask;

(C) maintain documentation of the salon services visitor's agreement to follow the applicable policies, procedures and requirements;

(D) maintain documentation of the salon services visitor's training;

(E) document the identity of each salon services visitor in the hospice inpatient unit's records and verify the identity of the salon services visitor; and

(F) maintain a record of each salon services visit, including:

(i) the date and time of the arrival and departure of the salon services visitor;

(ii) the name of the salon services visitor;

(iii) the name of the client being visited; and

(iv) attestation that the identity of the salon services visitor was confirmed; and

(G) prevent visitation by the salon services visitor if the client has an active COVID-19 infection.

(7) The hospice agency may cancel the salon services visit if the salon services visitor fails to comply with the agency's policy regarding salon services visits or applicable requirements in this section.

(j) If, at any time after the hospice agency's visitation designation is approved by HHSC, the area, unit, wing, hall, or building accommodating clients who are COVID-19 negative, experiences an outbreak of facility-acquired COVID-19, the hospice agency must notify the Regional Director in the LTCR Region where the hospice inpatient unit is located that the area, unit, wing, hall, building or hospice inpatient unit no longer meets visitation criteria, and all visit types authorized under the hospice agency's visitation designation, including outdoor visits, open window visits, vehicle parades, and indoor plexiglass visits, must be cancelled until the area, unit, wing, hall, building or hospice inpatient unit meets the criteria for such visitation.

(k) If a hospice agency operating a hospice inpatient unit fails to comply with a requirement of this section related to visitation or visitation designation, HHSC may rescind a visitation designation and take action in accordance with §558.601 of this chapter. In accordance with §558.602 of this chapter, HHSC may assess an administrative penalty of $500 without providing the hospice agency with an opportunity to correct the violation.

(l) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this rule or any minimum standard relating to a hospice agency operating a hospice inpatient unit, the hospice agency must comply with the executive order or other direction.

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

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

TRD-202101410
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: April 2, 2021
Expiration date: July 30, 2021
For further information, please call: (512) 438-3161

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.983

Pursuant to Parks and Wildlife Code, §12.027 and Government Code, §2001.034, the Texas Parks and Wildlife Department (the department) adopts, on an emergency basis, new 31 TAC §57.983, concerning Special Provisions - Spotted Seatrout. The emergency action imposes restrictions on the take of spotted seatrout in the upper and lower Laguna Madre bay systems and certain associated nearshore waters of the Gulf of Mexico in response to the impacts of recent prolonged severe freezing weather. The emergency rules will be in effect for 120 days and may be extended for up to an additional 60 days if the department determines that continuation is necessary to protect the resource.

In February 2021, a severe winter storm event affected Texas, including the entire coast. While freeze events along the coast are not unheard of, prolonged extreme cold temperatures of the type seen in February can cause fish kills and affect abundance and reproduction of spotted seatrout. If fish are not able to find refuge in deeper, thermally stable water, they can die when water temperatures remain too low for extended periods. If enough mature female fish are removed from the population, reproductive potential is depressed, which can impact size and structure of the stock. As the recent storms concluded, the department determined that the Laguna Madre bay systems were the location of significant mortality of spotted seatrout. Using guide-

lines established by the American Fisheries Society, the department assessed the Laguna Madre and determined an estimated mortality of 142,000 spotted seatrout, which is significant and is the largest freeze related fish kill event in the Laguna Madre in more than thirty years. Fish kills at this scale have the potential to significantly depress reproductive success, an effect that has the potential to become even more pronounced if significant numbers of spawning females are removed from the system by recreational angling activity. For that reason, the Texas Parks and Wildlife Commission and the department's executive director have determined that there is an immediate danger to spotted seatrout populations in the form of angling pressure additive to population impacts resulting from the severe freeze event and it is necessary to promulgate rules on an emergency basis to protect spotted seatrout populations. Spotted seatrout are a fish species regulated by the department. The new harvest regulations would affect the waters of the upper and lower Laguna Madre from the John F. Kennedy Causeway in Nueces County southward to the Brownsville Ship Channel and South Bay in Cameron County, and the waters of the Gulf of Mexico associated with the beachfront from the Packery Channel South Jetty to the Rio Grande in Cameron County. The rule imposes a slot limit of 17-23 inches and a daily bag limit of three fish for spotted seatrout, which is intended to reduce the harvest of mature female fish and thus preserve reproductive potential while maintaining some opportunity for the harvest of spotted seatrout.

The rule is adopted on an emergency basis under Parks and Wildlife Code, §12.027, which authorizes the Texas Parks and Wildlife Commission and the department's executive director to adopt emergency rules if there is an immediate danger to a species authorized to be regulated by the department, and under Government Code, §2001.034, which authorizes a state agency to adopt such emergency rules without prior notice or hearing.

§57.983. Special Provisions - Spotted Seatrout.

(a) In the waters of the Laguna Madre (upper and lower bay systems) south of the John F. Kennedy Causeway in Nueces County to the Brownsville Ship Channel and South Bay in Cameron County; and in the waters of the Gulf of Mexico contained in the area beginning at the convergence of the beachfront and Packery Channel South Jetty, then extending perpendicular to the beachfront a distance of 500 yards into the Gulf of Mexico, then extending parallel to the beachfront to a point 500 yards off of the beachfront and perpendicular to the convergence of the beach front and the Rio Grande, then perpendicular to the beachfront, then along the beachfront to the point of origin, the bag and possession limits for the take of spotted seatrout shall be as follows:

(1) minimum length limit: 17 inches;

(2) maximum length limit: 23 inches; and

(3) possession limit: 3 spotted seatrout.

(b) To the extent that any provision of §57.981 of this title (relating to Bag, Possession, and Length Limits) conflicts with the provisions of this section, this section controls.

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 April 1, 2021.

TRD-202101407
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: April 1, 2021
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For further information, please call: (512) 389-4775

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §§18.23 - 18.26

The Texas Ethics Commission (the Commission) proposes amendments to Texas Ethics Commission rules in Chapter 18, concerning General Rules Concerning Reports. Specifically, the Commission proposes amendments to §18.23, regarding Administrative Waiver of Fine, §18.24, regarding General Guidelines for Other Administrative Waiver or Reduction of Fine, §18.25, regarding Administrative Waiver or Reduction of Fine: Report Type I and §18.26, regarding Administrative Waiver or Reduction of Fine: Report Type II.

Current rules concerning the administrative waiver process, which determine whether a filer is eligible for a waiver or reduction of a penalty for filing a report late, were created to afford a uniform and objective process by which all filers are adjudged against the same set of standards. The proposed amendments would make some improvements to this process. The proposed revisions delete the distinction between "Type I" and "Type II" reports, instead focusing on whether a penalty is more than $500 or not. All reports with civil penalties of $500 or less will be addressed by §18.25. They also clarify when a waiver will result in a prior offense and when it will not.

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

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

The General Counsel has determined that during the first five years that the proposed amended rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules' applicability; or not positively or adversely affect this state's economy.

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

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

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

§18.23. Administrative Waiver of Statutory Civil Penalties [~~Fine~~].

(a) A filer may request the executive director to waive a civil penalty determined by §§305.033(b) or 572.033(b) of the Government Code or §254.042(b) of the Election Code [~~late fine~~] by submitting an affidavit to the executive director.

(b) If, in the executive director's discretion, the affidavit establishes any of the following grounds for a waiver, the executive director shall waive the civil penalty, and the penalty waived is not a prior offense for purposes of §18.25 of this title (relating to Administrative Waiver or Reduction of Certain Statutory Civil Penalties) or §18.26 of this title (relating to Administrative Waiver or Reduction of Other Statutory Civil Penalties in Excess of $500) [~~that states facts that establish that~~]:

(1) the report was filed late because of an unforeseen serious medical emergency or condition or a death that involved the filer, a family member or relative of the filer, a member of the filer's household, or a person whose usual job duties include preparation of the report;

(2) the report was filed late as a result of verifiable severe weather at the filer's location that prevented the filer from filing the report by the applicable deadline and the report was filed within a reasonable time after the deadline;

(3) the report was filed late because the filer was a first responder, as defined in §6.1 of this title (relating to Definitions), deployed to an emergency situation at the time of the filing deadline or a member of the military deployed on active duty at the time of the filing deadline and the report was filed within a reasonable time after the deadline;

(4) the filer filed a timely report but accidentally selected the incorrect filing year or filing period in the agency's electronic filing system, and:

(A) the filer filed a corrected report amending the filing year or filing period no later than 30 days after the individual was notified that the report appeared to be late; and

(B) the corrected report is substantively identical to the originally-filed report;

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

(6) the report was filed late because of other administrative error by the agency.

(c) If, in the executive director's discretion, the affidavit establishes any of the following grounds for a waiver, the executive director shall waive the civil penalty, but the penalty waived is a prior offense for purposes of §18.25 or §18.26:

(1) [~~(4)~~] the filer of the personal financial disclosure report is not an elected official, a candidate for election, or a salaried public servant, and the late report:

(A) was the first personal financial disclosure report filed late by the filer under Government Code chapter 572; and

(B) was filed no later than 30 days after the individual was notified that the report appeared to be late;

(2) [~~(5)~~] the filer of the personal financial disclosure report was an unopposed candidate in a primary election, and the late report:

(A) was the first personal financial disclosure report filed late by the filer under Government Code chapter 572; and

(B) was filed before the primary election.

(3) [~~(6)~~] the filer of the campaign finance report:

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

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

(C) filed the report no later than 30 days after the filer first learned that the report was late.[~~;~~]

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

[~~(8) other administrative error by the agency.~~]

[~~(b) If, in the executive director's discretion, the affidavit establishes grounds for a waiver under this section, the executive director shall waive the fine.~~]

§18.24. General Guidelines for Other Administrative Waiver or Reduction of Statutory Civil Penalties [~~Fine~~].

(a) A filer who does not qualify for a waiver under §18.23 of this title (relating to Administrative Waiver of Statutory Civil Penalties [~~Fine~~]) may request the executive director to waive a civil penalty determined by §§305.033(b) and 572.033(b) of the Government Code or §254.042(b) of the Election Code [~~late fine~~] by submitting an affidavit to the executive director. The executive director may waive or reduce a civil penalty [~~the late fine~~] if the filer meets the criteria and the late report meets the qualifications [~~under the guidelines~~] set out in §18.25 of this title (relating to Other Administrative Waiver or Reduction of Statutory Civil Penalties [~~Fine: Report Type I~~]) and §18.26 of this title (relating to Administrative Waiver or Reduction of Other Statutory Civil Penalties in Excess of $500 [~~Fine: Report Type II~~]).

[~~(b) For purposes of determining a waiver or reduction of a late fine under §18.25 and §18.26 of this title (relating to Administrative Waiver or Reduction of Fine: Report Type I or Administrative Waiver or Reduction of Fine: Report Type II, respectively), a late report will be classified by report type, as follows:~~]

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

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

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

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

[~~(C) a runoff report;~~]

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

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

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

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

(A) statewide office;

(B) legislative office;

(C) district judge;

(D) state appellate court justice;

(E) State Board of Education member; and

(F) Secretary of State.

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

(A) lobbyists;

(B) salaried non-elected officials;

(C) candidates for and officeholders of district attorney;

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

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

(F) a legislative caucus.

(3) Category C includes:

(A) unsalaried appointed board members and officials; and

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

(c) [~~(d)~~] For purposes of a reduction of a civil penalty [~~late fine~~] under §18.25 and §18.26 of this title, good cause includes, but is not limited to, the following:

(1) The report was filed no later than three days after the date it was due.

(2) The filer filed the report within five days after first learning the report was late from a late notice sent by the commission.

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

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

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

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

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

(1) the civil [~~late-filing~~] penalty for that prior late report was waived under §18.23(b) [~~§18.23 (a)(1) - (3)~~] of this title; or

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

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

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

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

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

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

§18.25. Administrative Waiver or Reduction of Certain Statutory Civil Penalties [~~Fine: Report Type I~~].

(a) The executive director shall apply [~~the guidelines set out in~~] this section to: [~~a late report classified as Report Type I under §18.24(b) of this title (relating to General Guidelines for Other Administrative Waiver or Reduction of Fine).~~]

(1) a late report subject to a statutory civil penalty of not more than $500; or

(2) a late report that:

(A) is subject to a statutory civil penalty in excess of $500; and

(B) discloses less than $3,000 in total political contributions and less than $3,000 in total political expenditures for the reporting period.

(b) In order to qualify for a waiver or reduction of a civil penalty [~~late fine~~] under this section, a filer must meet all of the following criteria:

(1) The filer has no more than two prior late offenses in the five (5) years preceding the filing deadline of the late report at issue;

(2) The filer filed the report within thirty (30) days of learning the report was late;

(3) The civil penalty [~~filer has not had the late fine~~] for the report at issue has not been increased by the commission at a public meeting pursuant to §254.042(b), Election Code, or §305.033(c) or §572.033(b), Government Code; and

(4) The filer does not have an outstanding civil penalty for a prior late report [~~late fine~~].

(c) The executive director shall use the following [~~levels~~] chart to determine the level of waiver or reduction of a civil penalty [~~late fine~~] under this section:
Figure: 1 TAC §18.25(c)
[~~Figure: 1 TAC §18.25(c)~~]

§18.26. Administrative Waiver or Reduction of Other Statutory Civil Penalties in Excess of $500 [~~Fine: Report Type II~~].

(a) The executive director shall apply [~~the guidelines set out in~~] this section to a late report that discloses more than $3,000 in total political contributions or more than $3,000 in total political expenditures during the reporting period and that is subject to a civil penalty in excess of $500 [~~classified as Report Type II under §18.24(b) of this title (relating to General Guidelines for Other Administrative Waiver of Reduction of Fine)~~].

(b) In order to qualify for a waiver or reduction of a civil penalty [~~late fine~~] under this section, a filer must meet all of the following criteria:

(1) The filer has no more than two prior late offenses in the five (5) years preceding the filing deadline of the late report at issue;

(2) The civil penalty [~~filer has not had the late fine~~] for the report at issue has not been increased by the commission at a public meeting pursuant to §254.042(b), Election Code, or §305.033(c) or §572.033(b), Government Code; and

(3) The filer does not have an outstanding civil penalty for a prior late report [~~late fine~~].

[~~(c) The executive director shall use the following levels chart to determine the level of waiver or reduction of a late fine under this section if:~~]

[~~(1) The late report at issue discloses less than $3,000 in total contributions and less than $3,000 in expenditures for the reporting period;~~]

[~~(2) The late report at issue was filed no more than thirty (30) days after the filer learned that the report was late; and~~]

[~~(3) The filer has no prior late offenses or only one prior late offense in the five (5) years preceding the filing deadline of the late report at issue.~~]
[~~Figure: 1 TAC §18.26(c)~~]

(c) [~~(d)~~] The executive director shall use the following [~~formulas~~] chart to determine the level of waiver or reduction of a civil penalty [~~late fine~~] under this section [~~if~~]:

(1) Figure: 1 TAC §18.26(c)(1) [~~The late report at issue discloses either $3,000 or more in total contributions or $3,000 or more in expenditures for the reporting period;~~]

(2) Figure: 1 TAC §18.25(c)(2)[~~The late report at issue was filed over thirty (30) days after the filer learned that the report was late; or~~]

(3) Figure: 1 TAC §18.25(c)(3) [~~The filer has two (2) prior late offenses in the five (5) years preceding the filing deadline of the late report at issue.~~]

[~~(e) Comments, Report Type II Formulas Chart Examples:~~] [~~Figure: 1 TAC §18.26(e)~~]

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 March 31, 2021.

TRD-202101404
J.R. Johnson
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: May 16, 2021
For further information, please call: (512) 463-5800

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES
SUBCHAPTER A. GENERAL RULES

1 TAC §20.1

The Texas Ethics Commission (the Commission) proposes amendments to Texas Ethics Commission rules in Subchapter A of Chapter 20. Specifically, the Commission proposes amendments to §20.1(11)(b), regarding Definitions.

The Election Code defines "political advertising" in part as any communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that "appears ... in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication." Tex. Elec. Code §251.001(16) (emphasis added).

Ethics Commission rules further define "political advertising" to address whether e-mail communications can qualify as political advertisements. Specifically, §20.1(11)(B) states that political advertising "does not include an individual communication made by e-mail but does include mass e-mails involving an expenditure of funds beyond the basic cost of hardware messaging software and bandwidth." 1 Texas Administrative Code §20.1(11)(B) (emphasis added). However, current Ethics Commission rules do not address text messages. This amendment would add text messages to §20.1(11)(B).

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

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

The General Counsel has determined that during the first five years that the proposed amended rule is in effect, it will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules' applicability; or not positively or adversely affect this state's economy.

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

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

The proposed amended rule affects Chapter 255 of the Election Code.

§20.1. Definitions.

The following words and terms, when used in Title 15 of the Election Code, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

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

(11) Political advertising:

(A) A communication that supports or opposes a political party, a public officer, a measure, or a candidate for nomination or election to a public office or office of a political party, and:

(i) is published in a newspaper, magazine, or other periodical in return for consideration;

(ii) is broadcast by radio or television in return for consideration;

(iii) appears in a pamphlet, circular, flier, billboard, or other sign, bumper sticker, or similar form of written communication; or

(iv) appears on an Internet website.

(B) The term does not include an individual communication made by e-mail or text message but does include mass e-mails and text messages involving an expenditure of funds beyond the basic cost of hardware messaging software and bandwidth.

(12) - (23) (No change.)

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

Filed with the Office of the Secretary of State on March 31, 2021.

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J.R. Johnson
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: May 16, 2021
For further information, please call: (512) 463-5800

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8065

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8065, concerning Disproportionate Share Hospital Reimbursement Methodology.

BACKGROUND AND PURPOSE

The Disproportionate Share Hospital (DSH) program payments are made by HHSC to qualifying hospitals that serve a large number of Medicaid and uninsured individuals. Federal law establishes an annual DSH allotment for each state that limits Federal Financial Participation (FFP) for total statewide DSH payments made to hospitals. Federal law also limits FFP for DSH payments through the hospital-specific DSH limit. In Texas, the state has established a State Payment Cap that limits the amount of payments that a provider receives through the interim payment process. This proposal amends the definitions of certain provider classes, describes a methodology for redistribution of certain recouped funds, modifies the calculation of the low-income utilization rate to reflect federal law, and makes other clarifying amendments.

Provider Class Definitions

Historically, HHSC has allowed state institutions for mental diseases (IMDs) to participate in the DSH program. However, the rule does not explicitly reference State IMD participation nor the fact that state IMDs have been recognized as state-owned providers for many years. The rule proposal will amend the definition of state-owned hospitals to be broader and include these hospitals.

The definition of Urban public hospital - Class one is being amended to clarify that the providers in this class must be owned and operated by an entity listed in the definition.

Methodology for Redistribution of Recouped Funds

The existing rule provides that HHSC can redistribute recouped funds to eligible providers but does not describe the method of the calculation. HHSC is proposing two methods of calculation. The first method will be used in DSH years 2011-2017 and 2020 and after and would redistribute funds proportionately to remaining Hospital Specific Limit (HSL) room for eligible hospitals.

For DSH years 2018-2019 HHSC will use a second method. Recouped funds from non-state providers will be redistributed to eligible providers using a weighted allocation methodology. First, HHSC will calculate a weight that will be applied to all providers. The weight is calculated based on the provider's final remaining HSL with and without the offset of payments for third-party and Medicare claims and encounters where Medicaid was a secondary payer to determine how significantly the provider's HSL was impacted by not offsetting these payments. Providers who did not have a significant change in their HSL will receive a larger weight.

After calculating the weighting factor, HHSC will make a first pass allocation by multiplying the weight by the provider's final remaining HSL with the offset of payments for third-party and Medicare claims and encounters where Medicaid was a secondary payer. HHSC will divide the product by the total remaining HSLs for all providers and multiply the quotient by the total amount of recouped dollars available for redistribution. HHSC will limit a provider's payment to the amount of the provider's final remaining HSL. If a provider is allocated a payment amount that is higher than its remaining HSL, HHSC will make a second pass allocation to redistribute the excess funds using the remaining HSL for all providers without applying the weight.

Recouped funds from state providers will be redistributed proportionately to eligible state providers based on the percentage that each eligible state provider's remaining final HSL calculated in the reconciliation described in §355.8065(q) is of the total remaining final HSL of all eligible state providers.

Low-Income Utilization Rate Calculation

The low-income utilization rate (LIUR) is a ratio that represents the hospital's volume of inpatient charity care relative to total inpatient services. As currently defined, several providers have a LIUR over one hundred, and the rule is being amended to address this. The rule is also being amended to align with federal statute.

Other Clarifications

The DSH rule requires providers to maintain a Trauma system designation or actively pursue one, but several providers do not have a Trauma system designation because the designation does not fit the hospital's function. Children's hospitals, IMDs, and State IMDs generally fall into this misalignment category. The rule makes no mention of an exemption for these providers, though it has been established practice to exempt them from this requirement, and HHSC proposes an amendment to explicitly exempt these providers.

The DSH rule currently has no provision for the DSH advanced payment methodology and leaves it up to HHSC's discretion. The Provider Finance Department has been using a methodology for several years to accomplish this payment and the proposal incorporates the established methodology into the rule.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8065(b)(15) adds the abbreviation "(HSL)" to the term "Hospital-specific limit."

The proposed amendment to §355.8065(b) adds a new definition "State institution of mental disease (State IMD)" to define an ownership type that was not defined previously. The paragraphs are renumbered to account for the addition.

The proposed amendment to §355.8065(b)(39) replaces the term "State-owned teaching hospital" with "State-owned hospital."

The proposed amendment to §355.8065(b)(45) updates references.

The proposed amendment to §355.8065(b)(46) deletes text and adds "owned and operated" to the definition of "Urban Public Hospital - Class One." There are proposed conforming amendments to §355.8065(h)(2)(C) and (h)(5)(F).

The proposed amendment to §355.8065(b)(47) makes a minor edit for clarity.

The proposed amendment to §355.8065(d)(2) deletes clauses (i) and (ii) and subparagraph (B). Subparagraph (A) is updated and combined with paragraph (2). The edits are made to align with federal statute.

The proposed amendment to §355.8065(d)(4) updates the term by adding "State IMDs" as a new hospital type that is deemed to qualify and deletes the term "teaching" to describe "hospitals" in this paragraph.

The proposed amendment to §355.8065(e)(3) adds subparagraph (C) to exempt Children's Hospitals, IMDs, and State IMDs from this condition of participation.

An edit is made to §355.8065(h)(2)(B)(ii) to update a reference to a definition.

The proposed amendment to §355.8065 adds subsections (p), Recoupment; (q), Reconciliation; (r), Redistribution of Recouped Funds; and (s), Advance Payments in order to document methodology and procedures that are in current practice. Proposed conforming amendments are made to 355.8065(l) and (o)(1)(E).

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will not require an increase in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

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

(6) the proposed rule will expand an existing rule;

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

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

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

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

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because this rule does not impose cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because of the increased transparency in the new provisions included in the rule.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not impose any additional fees or costs on those who are required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing to receive comments on the proposal will be held by HHSC through a webinar. The meeting date and time will be posted on the HHSC Communications and Events Website at https://hhs.texas.gov/about-hhs/communications-events and the HHSC Provider Finance Hospitals website at https://rad.hhs.texas.gov/hospitals-clinic/hospital-services/disproportionate-share-hospitals.

If you have questions, please contact Rene Cantu at UCTools@hhsc.state.tx.us.

PUBLIC COMMENT

Written comments on the proposal may be submitted to the HHSC Provider Finance Department, 4900 North Lamar Blvd., Austin, TX 78751 (Mail Code H-400); P.O. Box 149030, Austin, TX 78714-9030 (Mail Code H-400); by fax to (512)-730-7475; or by email to UCTools@hhsc.state.tx.us.

ADDITIONAL INFORMATION

For further information, please call Rene Cantu at (737) 203-7842 or email Al Anthony in the HHSC Provider Finance for Hospitals department at UCTools@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 21R078" in the subject line.

STATUTORY AUTHORITY

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

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§355.8065. Disproportionate Share Hospital Reimbursement Methodology.

(a) Introduction. Hospitals participating in the Texas Medicaid program that meet the conditions of participation and that serve a disproportionate share of low-income patients are eligible for reimbursement from the disproportionate share hospital (DSH) fund. The Texas Health and Human Services Commission (HHSC) will establish each hospital's eligibility for and amount of reimbursement using the methodology described in this section.

(b) Definitions.

(1) Adjudicated claim--A hospital claim for payment for a covered Medicaid service that is paid or adjusted by HHSC or another payer.

(2) Available DSH funds--The total amount of funds that may be distributed to eligible qualifying DSH hospitals for the DSH program year, based on the federal DSH allotment for Texas (as determined by the Centers for Medicare & Medicaid Services) and available non-federal funds. HHSC may divide available DSH funds for a program year into one or more portions of funds to allow for partial payment(s) of total available DSH funds at any one time with remaining funds to be distributed at a later date(s). If HHSC chooses to make a partial payment, the available DSH funds for that partial payment are limited to the portion of funds identified by HHSC for that partial payment.

(3) Available general revenue funds--The total amount of state general revenue funds appropriated to provide a portion of the non-federal share of DSH payments for the DSH program year for non-state-owned hospitals. If HHSC divides available DSH funds for a program year into one or more portions of funds to allow for partial payment(s) of total available DSH funds as described in paragraph (2) of this subsection, the available general revenue funds for that partial payment are limited to the portion of general revenue funds identified by HHSC for that partial payment.

(4) Bad debt--A debt arising when there is nonpayment on behalf of an individual who has third-party coverage.

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

(6) Charity care--The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to indigent individuals, either directly or through other nonprofit or public outpatient clinics, hospitals, or health care organizations. A hospital must set the income level for eligibility for charity care consistent with the criteria established in §311.031, Texas Health and Safety Code.

(7) Charity charges--Total amount of hospital charges for inpatient and outpatient services attributed to charity care in a DSH data year. These charges do not include bad debt charges, contractual allowances, or discounts given to other legally liable third-party payers.

(8) Children's hospital--A hospital within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(9) Disproportionate share hospital (DSH)--A hospital identified by HHSC that meets the DSH program conditions of participation and that serves a disproportionate share of Medicaid or indigent patients.

(10) DSH data year--A twelve-month period, two years before the DSH program year, from which HHSC will compile data to determine DSH program qualification and payment.

(11) DSH program year--The twelve-month period beginning October 1 and ending September 30.

(12) Dually eligible patient--A patient who is simultaneously eligible for Medicare and Medicaid.

(13) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(14) HHSC--The Texas Health and Human Services Commission or its designee.

(15) Hospital-specific limit (HSL)--The maximum payment amount, as applied to payments made during a prior DSH program year, that a hospital may receive in reimbursement for the cost of providing Medicaid-allowable services to individuals who are Medicaid-eligible or uninsured. The hospital-specific limit is calculated using the methodology described in §355.8066 of this title (relating to Hospital-Specific Limit Methodology) using actual cost and payment data from the DSH program year.

(16) Independent certified audit--An audit that is conducted by an auditor that operates independently from the Medicaid agency and the audited hospitals and that is eligible to perform the DSH audit required by CMS.

(17) Indigent individual--An individual classified by a hospital as eligible for charity care.

(18) Inpatient day--Each day that an individual is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere. The term includes observation days, rehabilitation days, psychiatric days, and newborn days. The term does not include swing bed days or skilled nursing facility days.

(19) Inpatient revenue--Amount of gross inpatient revenue derived from the most recent completed Medicaid cost report or reports related to the applicable DSH data year. Gross inpatient revenue excludes revenue related to the professional services of hospital-based physicians, swing bed facilities, skilled nursing facilities, intermediate care facilities, other nonhospital revenue, and revenue not identified by the hospital.

(20) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

(21) Intergovernmental transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(22) Low-income days--Number of inpatient days attributed to indigent patients, calculated as described in subsection (h)(4)(A)(ii) of this section.

(23) Low-income utilization rate--A ratio, calculated as described in subsection (d)(2) of this section, that represents the hospital's volume of inpatient charity care relative to total inpatient services.

(24) Mean Medicaid inpatient utilization rate--The average of Medicaid inpatient utilization rates for all hospitals that have received a Medicaid payment for an inpatient claim, other than a claim for a dually eligible patient, that was adjudicated during the relevant DSH data year.

(25) Medicaid contractor--Fiscal agents and managed care organizations with which HHSC contracts to process data related to the Medicaid program.

(26) Medicaid cost report--Hospital and Hospital Health Care Complex Cost Report (Form CMS 2552), also known as the Medicare cost report.

(27) Medicaid hospital--A hospital meeting the qualifications set forth in §354.1077 of this title (relating to Provider Participation Requirements) to participate in the Texas Medicaid program.

(28) Medicaid inpatient utilization rate (MIUR)--A ratio, calculated as described in subsection (d)(1) of this section, that represents a hospital's volume of Medicaid inpatient services relative to total inpatient services.

(29) MSA--Metropolitan Statistical Area as defined by the United States Office of Management and Budget. MSAs with populations greater than or equal to 137,000, according to the most recent decennial census, are considered "the largest MSAs."

(30) Non-federal percentage--The non-federal percentage equals one minus the federal medical assistance percentage (FMAP) for the program year.

(31) Non-urban public hospital--A rural public-financed hospital, as defined in paragraph (37) of this subsection, or a hospital owned and operated by a governmental entity other than hospitals in Urban public hospital - Class one or Urban public hospital - Class two.

(32) Obstetrical services--The medical care of a woman during pregnancy, delivery, and the post-partum period provided at the hospital listed on the DSH application.

(33) PMSA--Primary Metropolitan Statistical Area as defined by the United States Office of Management and Budget.

(34) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(35) Ratio of cost-to-charges (inpatient only)--A ratio that covers all applicable hospital costs and charges relating to inpatient care. This ratio does not distinguish between payer types such as Medicare, Medicaid, or private pay.

(36) Rural public hospital--A hospital owned and operated by a governmental entity that is located in a county with 500,000 or fewer persons, based on the most recent decennial census.

(37) Rural public-financed hospital--A hospital operating under a lease from a governmental entity in which the hospital and governmental entity are both located in the same county with 500,000 or fewer persons, based on the most recent decennial census, where the hospital and governmental entity have both signed an attestation that they wish the hospital to be treated as a public hospital for all purposes under both this section and §355.8201 of this title (relating to Waiver Payments to Hospitals for Uncompensated Care).

(38) State chest hospital--A public health facility operated by the Department of State Health Services designated for the care and treatment of patients with tuberculosis.

(39) State institution for mental diseases (State IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness and that is owned and operated by a state university or other state agency.

(40) [~~(39)~~] State-owned [~~teaching~~] hospital--A hospital owned and operated by a state university or other state agency.

(41) [~~(40)~~] State payment cap--The maximum payment amount, as applied to payments that will be made for the DSH program year, that a hospital may receive in reimbursement for the cost of providing Medicaid-allowable services to individuals who are Medicaid-eligible or uninsured. The state payment cap is calculated using the methodology described in §355.8066 of this title (relating to Hospital-Specific Limit Methodology) using interim cost and payment data from the DSH data year.

(42) [~~(41)~~] Third-party coverage--Creditable insurance coverage consistent with the definitions in 45 Code of Federal Regulations (CFR) Parts 144 and 146, or coverage based on a legally liable third-party payer.

(43) [~~(42)~~] Total Medicaid inpatient days--Total number of inpatient days based on adjudicated claims data for covered services for the relevant DSH data year.

(A) The term includes:

(i) Medicaid-eligible days of care adjudicated by managed care organizations or HHSC;

(ii) days that were denied payment for spell-of-illness limitations;

(iii) days attributable to individuals eligible for Medicaid in other states, including dually eligible patients;

(iv) days with adjudicated dates during the period; and

(v) days for dually eligible patients for purposes of the MIUR calculation described in subsection (d)(1) of this section.

(B) The term excludes:

(i) days attributable to Medicaid-eligible patients ages 21 through 64 in an IMD;

(ii) days denied for late filing and other reasons; and

(iii) days for dually eligible patients for purposes of the following calculations:

(I) Total Medicaid inpatient days, as described in subsection (d)(3) of this section; and

(II) Pass one distribution, as described in subsection (h)(4) of this section.

(44) [~~(43)~~] Total Medicaid inpatient hospital payments--Total amount of Medicaid funds that a hospital received for adjudicated claims for covered inpatient services during the DSH data year. The term includes payments that the hospital received:

(A) for covered inpatient services from managed care organizations and HHSC; and

(B) for patients eligible for Medicaid in other states.

(45) [~~(44)~~] Total state and local payments--Total amount of state and local payments that a hospital received for inpatient care during the DSH data year. The term includes payments under state and local programs that are funded entirely with state general revenue funds and state or local tax funds, such as County Indigent Health Care, Children with Special Health Care Needs, and Kidney Health Care. The term excludes payment sources that contain federal dollars such as Medicaid payments, Children's Health Insurance Program (CHIP) payments funded under Title XXI of the Social Security Act, Substance Abuse and Mental Health Services Administration, Ryan White Title I, Ryan White Title II, Ryan White Title III, and contractual discounts and allowances related to TRICARE, Medicare, and Medicaid.

(46) [~~(45)~~] Urban public hospital--Any of the urban hospitals listed in paragraph (47) [~~(46)~~] or (48) [~~(47)~~] of this subsection.

(47) [~~(46)~~] Urban public hospital - Class one--A hospital that is owned and operated [~~operated~~] by [~~or under a lease contract with~~] one of the following entities: the Dallas County Hospital District, the El Paso County Hospital District, the Harris County Hospital District, the Tarrant County Hospital District, [~~the Travis County Healthcare District dba Central Health,~~] or the University Health System of Bexar County.

(48) [~~(47)~~] Urban public hospital - Class two--A hospital [~~that is~~] operated by or under a lease contract with one of the following entities: the Ector County Hospital District, the Lubbock County Hospital District, or the Nueces County Hospital District.

(c) Eligibility. To be eligible to participate in the DSH program, a hospital must:

(1) be enrolled as a Medicaid hospital in the State of Texas;

(2) have received a Medicaid payment for an inpatient claim, other than a claim for a dually eligible patient, that was adjudicated during the relevant DSH data year; and

(3) apply annually by completing the application packet received from HHSC by the deadline specified in the packet.

(A) Only a hospital that meets the condition specified in paragraph (2) of this subsection will receive an application packet from HHSC.

(B) The application may request self-reported data that HHSC deems necessary to determine each hospital's eligibility. HHSC may audit self-reported data.

(C) A hospital that fails to submit a completed application by the deadline specified by HHSC will not be eligible to participate in the DSH program in the year being applied for or to appeal HHSC's decision.

(D) For purposes of DSH eligibility, a multi-site hospital is considered one provider unless it submits separate Medicaid cost reports for each site. If a multi-site hospital submits separate Medicaid cost reports for each site, for purposes of DSH eligibility, it must submit a separate DSH application for each site.

(E) HHSC will consider a merger of two or more hospitals for purposes of the DSH program for any hospital that submits documents verifying the merger status with Medicare prior to the deadline for submission of the DSH application. Otherwise, HHSC will determine the merged entity's eligibility for the subsequent DSH program year. Until the time that the merged hospitals are determined eligible for payments as a merged hospital, each of the merging hospitals will continue to receive any DSH payments to which it was entitled prior to the merger.

(d) Qualification. For each DSH program year, in addition to meeting the eligibility requirements, applicants must meet at least one of the following qualification criteria, which are determined using information from a hospital's application, from HHSC, or from HHSC's Medicaid contractors, as specified by HHSC:

(1) Medicaid inpatient utilization rate. A hospital's Medicaid inpatient utilization rate is calculated by dividing the hospital's total Medicaid inpatient days by its total inpatient census days for the DSH data year.

(A) A hospital located outside an MSA or PMSA must have a Medicaid inpatient utilization rate greater than the mean Medicaid inpatient utilization rate for all Medicaid hospitals.

(B) A hospital located inside an MSA or PMSA must have a Medicaid inpatient utilization rate that is at least one standard deviation above the mean Medicaid inpatient utilization rate for all Medicaid hospitals.

(2) Low-income utilization rate. A hospital must have a low-income utilization rate greater than 25 percent.

[~~(A)~~] The low-income utilization rate is the sum (expressed as a percentage) of the fractions calculated as described in the Social Security Act §1923(b)(3). [~~in clauses (i) and (ii) of this subparagraph:~~]

~~f(i)~~ ~~The sum of the total Medicaid inpatient hospital payments and the total state and local payments paid to the hospital for inpatient care in the DSH data year, divided by a hospital's gross inpatient revenue multiplied by the hospital's ratio of cost-to-charges (inpatient only) for the same period: (Total Medicaid Inpatient Hospital Payments + Total State and Local Payments)/(Gross Inpatient Revenue x Ratio of Costs to Charges (inpatient only)).~~]

~~f(ii)~~ ~~Inpatient charity charges in the DSH data year minus the amount of payments for inpatient hospital services received directly from state and local governments, excluding all Medicaid payments, in the DSH data year, divided by the gross inpatient revenue in the same period: (Total Inpatient Charity Charges - Total State and Local Payments)/Gross Inpatient Revenue).~~]

[~~(B) HHSC will determine the ratio of cost-to-charges (inpatient only) by using information from the appropriate worksheets of each hospital's Medicaid cost report or reports that correspond to the DSH data year. In the absence of a Medicaid cost report for that period, HHSC will use the latest available submitted Medicaid cost report or reports.~~]

(3) Total Medicaid inpatient days.

(A) A hospital must have total Medicaid inpatient days at least one standard deviation above the mean total Medicaid inpatient days for all hospitals participating in the Medicaid program, except;

(B) A hospital in a county with a population of 290,000 persons or fewer, according to the most recent decennial census, must have total Medicaid inpatient days at least 70 percent of the sum of the mean total Medicaid inpatient days for all hospitals in this subset plus one standard deviation above that mean.

(C) Days for dually eligible patients are not included in the calculation of total Medicaid inpatient days under this paragraph.

(4) Children's hospitals, state-owned [~~teaching~~] hospitals, and state chest hospitals. Children's hospitals, state-owned [~~teaching~~] hospitals, [~~and~~] state chest hospitals, and State IMDs that do not otherwise qualify as disproportionate share hospitals under this subsection will be deemed to qualify. A hospital deemed to qualify must still meet

the eligibility requirements under subsection (c) of this section and the conditions of participation under subsection (e) of this section.

(5) Merged hospitals. Merged hospitals are subject to the application requirement in subsection (c)(3)(E) of this section. HHSC will aggregate the data used to determine qualification under this subsection from the merged hospitals to determine whether the single Medicaid provider that results from the merger qualifies as a Medicaid disproportionate share hospital.

(6) Hospitals that held a single Medicaid provider number during the DSH data year, but later added one or more Medicaid provider numbers. Upon request, HHSC will apportion the Medicaid DSH funding determination attributable to a hospital that held a single Medicaid provider number during the DSH data year (data year hospital), but subsequently added one or more Medicaid provider numbers (new program year hospital(s)) between the data year hospital and its associated new program year hospital(s). In these instances, HHSC will apportion the Medicaid DSH funding determination for the data year hospital between the data year hospital and the new program year hospital(s) based on estimates of the division of Medicaid inpatient and low income utilization between the data year hospital and the new program year hospital(s) for the program year, so long as all affected providers satisfy the Medicaid DSH conditions of participation under subsection (e) of this section and qualify as separate hospitals under subsection (d) of this section based on HHSC's Medicaid DSH qualification criteria in the applicable Medicaid DSH program year. In determining whether the new program year hospital(s) meet the Medicaid DSH conditions of participation and qualification, proxy program year data may be used.

(e) Conditions of participation. HHSC will require each hospital to meet and continue to meet for each DSH program year the following conditions of participation:

(1) Two-physician requirement.

(A) In accordance with Social Security Act §1923(e)(2), a hospital must have at least two licensed physicians (doctor of medicine or osteopathy) who have hospital staff privileges and who have agreed to provide nonemergency obstetrical services to individuals who are entitled to medical assistance for such services.

(B) Subparagraph (A) of this paragraph does not apply if the hospital:

(i) serves inpatients who are predominantly under 18 years of age; or

(ii) was operating but did not offer nonemergency obstetrical services as of December 22, 1987.

(C) A hospital must certify on the DSH application that it meets the conditions of either subparagraph (A) or (B) of this paragraph, as applicable, at the time the DSH application is submitted.

(2) Medicaid inpatient utilization rate. At the time of qualification and during the DSH program year, a hospital must have a Medicaid inpatient utilization rate, as calculated in subsection (d)(1) of this section, of at least one percent.

(3) Trauma system.

(A) The hospital must be in active pursuit of designation or have obtained a trauma facility designation as defined in §780.004 and §§773.111 - 773.120, Texas Health and Safety Code, respectively, and consistent with 25 TAC §157.125 (relating to Requirements for Trauma Facility Designation) and §157.131 (relating to the Designated Trauma Facility and Emergency Medical Services Account). A hospital that has obtained its trauma facility designation must maintain that designation for the entire DSH program year.

(B) HHSC will receive an annual report from the Office of EMS/Trauma Systems Coordination regarding hospital participation in regional trauma system development, application for trauma facility designation, and trauma facility designation or active pursuit of designation status before final qualification determination for interim DSH payments. HHSC will use this report to confirm compliance with this condition of participation by a hospital applying for DSH funds.

(C) The following hospital types are exempted from the condition of participation described in this paragraph: Children's Hospitals, IMDs, and State IMDs.

(4) Maintenance of local funding effort. A hospital district in one of the state's largest MSAs or in a PMSA must not reduce local tax revenues to its associated hospitals as a result of disproportionate share funds received by the hospital. For this provision to apply, the hospital must have more than 250 licensed beds.

(5) Retention of and access to records. A hospital must retain and make available to HHSC records and accounting systems related to DSH data for at least five years from the end of each DSH program year in which the hospital qualifies, or until an open audit is completed, whichever is later.

(6) Compliance with audit requirements. A hospital must agree to comply with the audit requirements described in subsection (o) of this section.

(7) Merged hospitals. Merged hospitals are subject to the application requirement in subsection (c)(3)(E) of this section. If HHSC receives documents verifying the merger status with Medicare prior to the deadline for submission of the DSH application, the merged entity must meet all conditions of participation. If HHSC does not receive the documents verifying the merger status with Medicare prior to the deadline for submission of the DSH application, any proposed merging hospitals that are receiving DSH payments must continue to meet all conditions of participation as individual hospitals to continue receiving DSH payments for the remainder of the DSH program year.

(8) Changes that may affect DSH participation. A hospital receiving payments under this section must notify HHSC's Rate Analysis Department within 30 days of changes in ownership, operation, provider identifier, designation as a trauma facility or as a children's hospital, or any other change that may affect the hospital's continued eligibility, qualification, or compliance with DSH conditions of participation. At the request of HHSC, the hospital must submit any documentation supporting the change.

(f) State payment cap and hospital-specific limit calculation. HHSC uses the methodology described in §355.8066 of this title to calculate a state payment cap for each Medicaid hospital that applies and qualifies to receive payments for the DSH program year under this section, and a hospital-specific limit for each hospital that received payments in a prior program year under this section. For payments for each DSH program year beginning before October 1, 2017, the state payment cap calculated as described in §355.8066 will be reduced by the amount of prior payments received by each participating hospital for that DSH program year. These prior payments will not be considered anywhere else in the calculation.

(g) Distribution of available DSH funds. HHSC will distribute the available DSH funds as defined in subsection (b)(2) of this section among eligible, qualifying DSH hospitals using the following priorities:

(1) State-owned teaching hospitals, state-owned IMDs, and state chest hospitals. HHSC may reimburse state-owned teaching hospitals, state-owned IMDs, and state chest hospitals an amount less than or equal to their state payment caps, except that aggregate payments to IMDs statewide may not exceed federally mandated reimbursement limits for IMDs.

(2) Other hospitals. HHSC distributes the remaining available DSH funds, if any, to other qualifying hospitals using the methodology described in subsection (h) of this section.

(A) The remaining available DSH funds equal the lesser of the funds as defined in subsection (b)(2) of this section less funds expended under paragraph (1) of this subsection or the sum of remaining qualifying hospitals' state payment caps.

(B) The remaining available general revenue funds equal the funds as defined in subsection (b)(3) of this section.

(h) DSH payment calculation.

(1) Data verification. HHSC uses the methodology described in §355.8066(e) of this title to verify the data used for the DSH payment calculations described in this subsection. The verification process includes:

(A) notice to hospitals of the data provided to HHSC by Medicaid contractors; and

(B) an opportunity for hospitals to request HHSC review of disputed data.

(2) Establishment of DSH funding pools. From the amount of remaining DSH funds determined in subsection (g)(2) of this section, HHSC will establish three DSH funding pools.

(A) Pool One.

(i) Pool One is equal to the sum of the remaining available general revenue funds and associated federal matching funds; and

(ii) Pool One payments are available to all non-state-owned hospitals, including non-state-owned public hospitals.

(B) Pool Two.

(i) Pool Two is equal to the lesser of:

(I) the amount of remaining DSH funds determined in subsection (g)(2) of this section less the amount determined in paragraph (2)(A) of this subsection multiplied by the FMAP in effect for the program year; or

(II) the federal matching funds associated with the intergovernmental transfers received by HHSC that make up the funds for Pool Three; and

(ii) Pool Two payments are available to all non-state-owned hospitals except for any urban public hospital as defined in subsection (b)(46) [~~(b)(45)~~] of this section; rural public hospital as defined in subsection (b)(36) of this section; or rural public-financed hospital as defined in subsection (b)(37) of this section owned by or affiliated with a governmental entity that does not transfer any funds to HHSC for Pool Three as described in subparagraph (C)(iii) of this paragraph.

(C) Pool Three.

(i) Pool Three is equal to the sum of intergovernmental transfers for DSH payments received by HHSC from governmental entities that own and operate [~~or are under lease contracts with~~] Urban public hospitals - Class one, governmental entities that operate or are under lease contracts with an Urban public hospital - [~~and~~] Class two, and non-urban public hospitals.

(ii) Pool Three payments are available to the hospitals that are operated by or under lease contracts with the governmental entities described in clause (i) of this subparagraph that provide intergovernmental transfers.

(iii) HHSC will allocate responsibility for funding Pool Three as follows:

(I) Urban public hospitals - Class two. Each governmental entity that operates or is under a lease contract with an Urban public hospital - Class two is responsible for funding an amount equal to the non-federal share of Pass One and Pass Two DSH payments from Pool Two (calculated as described in paragraphs (4) and (5) of this subsection) to that hospital.

(II) Non-urban public hospitals.

(-a-) Each governmental entity that operates or is under a lease contract with a non-urban public hospital is responsible for funding one-half of the non-federal share of the hospital's Pass One and Pass Two DSH payments from Pool Two (calculated as described in paragraphs (4) and (5) of this subsection) to that hospital.

(-b-) If general revenue available for Pool One does not equal at least one-half of the non-federal share of non-urban public hospitals' Pass One and Pass Two DSH payments from Pool Two, each governmental entity that operates or is under a lease contract with a non-urban public hospital is responsible for increasing its funding of the non-federal share of that hospital's Pass One and Pass Two DSH payments from Pool Two by an amount equal to the Pool One general revenue shortfall associated with the hospital.

(III) Urban public hospitals - Class one. Each governmental entity that owns and operates [~~or is under a lease contract with~~] an Urban public hospital - Class one is responsible for funding the non-federal share of the Pass One and Pass Two DSH payments from Pool Two (calculated as described in paragraphs (4) and (5) of this subsection) to its affiliated hospital and a portion of the non-federal share of the Pass One and Pass Two DSH payments from Pool Two to private hospitals. For funding payments to private hospitals, HHSC will initially suggest an amount in proportion to each Urban public hospital - Class one's individual state payment cap relative to total state payment caps for all Urban public hospitals - Class one. If an entity transfers less than the suggested amount, HHSC will take the steps described in paragraph (5)(F) of this subsection.

(IV) Following the calculations described in paragraphs (4) and (5) of this subsection, HHSC will notify each governmental entity of its allocated intergovernmental transfer amount.

(3) Weighting factors.

(A) HHSC will assign each non-urban public hospital a weighting factor that is calculated as follows:

(i) Determine the non-federal percentage in effect for the program year and multiply by 0.50.

(ii) Add 1.00 to the result from clause (i) of this subparagraph and round the result to two decimal places; this rounded sum is the non-urban public hospital weighting factor.

(iii) If paragraph (2)(C)(iii)(II)(-b-) of this subsection is invoked, the 0.50 referenced in clause (i) of this subparagraph will be increased to represent the increased proportion of the non-federal share of non-urban public hospitals' Pass One and Pass Two DSH payments from Pool Two required to be funded by these hospitals' associated governmental entities.

(B) All other DSH hospitals not described in subparagraph (A) of this paragraph will be assigned a weighting factor of 1.00, except for DSH program years beginning before October 1, 2017, HHSC will assign weighting factors as follows to each non-state DSH hospital:

(i) Other Insurance Weight. HHSC will divide the amount of third party commercial insurance payments for that hospital from the DSH data year by the state payment cap calculated according to §355.8066(c)(1)(D)(ii)(I)(-b-), except that costs are reduced by payments from all payors.

(I) The result, if greater than 1, will be used as a weighting factor.

(II) If the result is less than 1, no weighting factor will be applied.

(ii) Year-To-Date Payment Weight. HHSC will assign a weighting factor of 20 to any hospital that did not receive any prior payments for that DSH program year. This weighting factor will be added to the weighting factor calculated in clause (i) of this subparagraph.

(4) Pass One distribution and payment calculation for Pools One and Two.

(A) HHSC will calculate each hospital's total DSH days as follows:

(i) Weighted Medicaid inpatient days are equal to the hospital's Medicaid inpatient days multiplied by the appropriate weighting factors from paragraph (3) of this subsection.

(ii) Low-income days are equal to the hospital's low-income utilization rate as calculated in subsection (d)(2) of this section multiplied by the hospital's total inpatient days as defined in subsection (b)(18) of this section.

(iii) Weighted low-income days are equal to the hospital's low-income days multiplied by the appropriate weighting factors from paragraph (3) of this subsection.

(iv) Total DSH days equal the sum of weighted Medicaid inpatient days and weighted low-income days.

(B) Using the results from subparagraph (A) of this paragraph, HHSC will:

(i) Divide each hospital's total DSH days from subparagraph (A)(iv) of this paragraph by the sum of total DSH days for all non-state-owned DSH hospitals to obtain a percentage.

(ii) Multiply each hospital's percentage as calculated in clause (i) of this subparagraph by the amount determined in paragraph (2)(A) of this subsection to determine each hospital's Pass One projected payment amount from Pool One.

(iii) Multiply each hospital's percentage as calculated in clause (i) of this subparagraph by the amount determined in paragraph (2)(B)(i)(I) or (II) of this subsection, as appropriate, to determine each hospital's Pass One projected payment amount from Pool Two.

(iv) Sum each hospital's Pass One projected payment amounts from Pool One and Pool Two, as calculated in clauses (ii) and (iii) of this subparagraph respectively. The result of this calculation is the hospital's Pass One projected payment amount from Pools One and Two combined.

(v) Divide the Pass One projected payment amount from Pool Two as calculated in clause (iii) of this subparagraph by the hospital's Pass One projected payment amount from Pools One and Two combined as calculated in clause (iv) of this subparagraph. The result of this calculation is the percentage of the hospital's total Pass One projected payment amount accruing from Pool Two.

(5) Pass Two - Redistribution of amounts in excess of state payment caps from Pass One for Pools One and Two combined. In the event that the projected payment amount calculated in paragraph (4)(B)(iv) of this subsection plus any previous payment amounts for the program year exceeds a hospital's state payment cap, the payment amount will be reduced such that the sum of the payment amount plus any previous payment amounts is equal to the state payment cap. HHSC will sum all resulting excess funds and redistribute that amount to qualifying non-state-owned hospitals that have projected payments, including any previous payment amounts for the program year, below their state payment caps. For each such hospital, HHSC will:

(A) subtract the hospital's projected DSH payment from paragraph (4)(B)(iv) of this subsection plus any previous payment amounts for the program year from its state payment cap;

(B) sum the results of subparagraph (A) of this paragraph for all hospitals; and

(C) compare the sum from subparagraph (B) of this paragraph to the total excess funds calculated for all non-state-owned hospitals.

(i) If the sum of subparagraph (B) of this paragraph is less than or equal to the total excess funds, HHSC will pay all such hospitals up to their state payment cap.

(ii) If the sum of subparagraph (B) of this paragraph is greater than the total excess funds, HHSC will calculate payments to all such hospitals as follows:

(I) Divide the result of subparagraph (A) of this paragraph for each hospital by the sum from subparagraph (B) of this paragraph.

(II) Multiply the ratio from subclause (I) of this clause by the sum of the excess funds from all non-state-owned hospitals.

(III) Add the result of subclause (II) of this clause to the projected DSH payment for that hospital to calculate a revised projected payment amount from Pools One and Two after Pass Two.

(D) If a governmental entity that operates or leases to an Urban public hospital - Class two does not fully fund the amount described in paragraph (2)(C)(iii)(I) of this subsection, HHSC will reduce the hospital's Pass One and Pass Two DSH payment from Pool Two to the level supported by the amount of the intergovernmental transfer.

(E) If a governmental entity that operates or is under a lease contract with a non-urban public hospital does not fully fund the amount described in paragraph (2)(C)(iii)(II) of this subsection, HHSC will reduce that portion of the hospital's Pass One and Pass Two DSH payment from Pool Two to the level supported by the amount of the intergovernmental transfer.

(F) If a governmental entity that owns and operates [~~or leases to~~] an Urban public hospital - Class one does not fully fund the amount described in paragraph (2)(C)(iii)(III) of this subsection, HHSC will take the following steps:

(i) Provide an opportunity for the governmental entities affiliated with the other Urban public hospitals - Class one to transfer additional funds to HHSC;

(ii) Recalculate total DSH days for each Urban public hospital - Class one for purposes of the calculations described in paragraphs (4)(B) and (5)(A) - (C) of this subsection as follows:

(I) Divide the intergovernmental transfer made on behalf of each Urban public hospital - Class one by the sum of intergovernmental transfers made on behalf of all Urban public hospitals - Class one;

(II) Sum the total DSH days for all Urban public hospitals - Class one, calculated as described in paragraph (4)(A) of this subsection; and

(III) Multiply the result of subclause (I) of this clause by the result of subclause (II) of this clause to determine total DSH days for that hospital;

(iii) Recalculate Pass One payments from Pool Two and Pass Two payments from Pools One and Two for Urban public hospitals - Class one and private hospitals following the methodology described in paragraphs (4)(B) and (5)(A) - (C) of this subsection substituting the results from clause (ii) of this subparagraph for the results from paragraph (4)(A) of this subsection for Urban public hospitals - Class one;

(iv) Perform a second recalculation of Pass Two payments from Pools One and Two for Urban public hospitals - Class one as follows:

(I) Multiply each hospital's total Pass Two projected payment amount from Pools One and Two from paragraph (5) of this subsection, after performing the recalculation described in clause (iii) of this subparagraph, by the percentage of the hospital's total Pass One projected payment amount accruing from Pool Two from paragraph (4)(B)(v) of this subsection, after performing the recalculation described in clause (iii) of this subparagraph. The result is the hospital's Pass Two projected payment amount from Pool Two;

(II) Subtract the hospital's Pass Two projected payment amount from Pool Two from subclause (I) of this clause from the hospital's total Pass Two projected payment amount from Pools One and Two from paragraph (5) of this subsection, after performing the recalculation described in clause (iii) of this subparagraph. The result is the hospital's Pass Two projected payment amount from Pool One;

(III) Sum the total Pass Two projected payment amounts from Pool Two, calculated as described in subclause (I) of this clause, for all Urban public hospitals - Class one;

(IV) Multiply the result of clause (ii)(I) of this subparagraph for the hospital by the result of subclause (III) of this clause to determine the Pass Two payment from Pool Two for the hospital; and

(V) Sum the results of subclauses (II) and (IV) of this clause to determine the total Pass Two payment from Pools One and Two for that hospital; and

(v) Use the results of this subparagraph in the calculations described in paragraphs (6) and (7) of this subsection.

(6) Pass One distribution and payment calculation for Pool Three.

(A) HHSC will calculate the initial payment from Pool Three as follows:

(i) For each Urban public hospital - Class one and Class two--

(I) multiply its total Pool One and Pool Two payments after Pass Two from paragraph (5) of this subsection by the percentage of the hospital's total Pass One projected payment amount accruing from Pool Two from paragraph (4)(B)(v) of this subsection;

(II) divide the result from subclause (I) of this clause by the FMAP for the program year; and

(III) multiply the result from subclause (II) of this clause by the non-federal percentage. The result is the Pass One initial payment from Pool Three for these hospitals.

(ii) For each Non-urban public hospital--

(I) multiply its total Pool One and Pool Two payments after Pass Two from paragraph (5) of this subsection by the percentage of the hospital's total Pass One projected payment amount accruing from Pool Two from paragraph (4)(B)(v) of this subsection;

(II) divide the result from subclause (I) of this clause by the FMAP for the program year; and

(III) multiply the result from subclause (II) of this clause by the non-federal percentage and multiply by 0.50. The result is the Pass One initial payment from Pool Three for these hospitals.

(IV) If paragraph (2)(C)(iii)(II)(-b-) of this subsection is invoked, the 0.50 referenced in subclause (III) of this clause will be increased to represent the increased proportion of the non-federal share of non-urban public hospitals' Pass One and Pass Two DSH payments from Pool Two required to be funded by these hospitals' associated governmental entities.

(iii) For all other hospitals, the Pass One initial payment from Pool Three is equal to zero.

(B) HHSC will calculate the secondary payment from Pool Three for each Urban public hospital - Class one as follows:

(i) Sum the intergovernmental transfers made on behalf of all Urban public hospitals - Class one;

(ii) For each Urban public hospital - Class one, divide the intergovernmental transfer made on behalf of that hospital by the sum of the intergovernmental transfers made on behalf of all Urban public hospitals - Class one from clause (i) of this subparagraph;

(iii) Sum all Pass One initial payments from Pool Three from subparagraph (A) of this paragraph;

(iv) Subtract the sum from clause (iii) of this subparagraph from the total value of Pool Three; and

(v) Multiply the result from clause (ii) of this subparagraph by the result from clause (iv) of this subparagraph for each Urban public hospital - Class One. The result is the Pass One secondary payment from Pool Three for that hospital.

(vi) For all other hospitals, the Pass One secondary payment from Pool Three is equal to zero.

(C) HHSC will calculate each hospital's total Pass One payment from Pool Three by adding its Pass One initial payment from Pool Three and its Pass One secondary payment from Pool Three.

(7) Pass Two - Secondary redistribution of amounts in excess of state payment caps for Pool Three. For each hospital that received a Pass One initial or secondary payment from Pool Three, HHSC will sum the result from paragraph (5) of this subsection and the result from paragraph (6) of this subsection to determine the hospital's total projected DSH payment. In the event this sum plus any previous payment amounts for the program year exceeds a hospital's state pay-

ment cap, the payment amount will be reduced such that the sum of the payment amount plus any previous payment amounts is equal to the state payment cap. HHSC will sum all resulting excess funds and redistribute that amount to qualifying non-state-owned hospitals eligible for payments from Pool Three that have projected payments, including any previous payment amounts for the program year, below their state payment caps. For each such hospital, HHSC will:

(A) subtract the hospital's projected DSH payment plus any previous payment amounts for the program year from its state payment cap;

(B) sum the results of subparagraph (A) of this paragraph for all hospitals; and

(C) compare the sum from subparagraph (B) of this paragraph to the total excess funds calculated for all non-state-owned hospitals.

(i) If the sum of subparagraph (B) of this paragraph is less than or equal to the total excess funds, HHSC will pay all such hospitals up to their state payment cap.

(ii) If the sum of subparagraph (B) of this paragraph is greater than the total excess funds, HHSC will calculate payments to all such hospitals as follows:

(I) Divide the result of subparagraph (A) of this paragraph for each hospital by the sum from subparagraph (B) of this paragraph.

(II) Multiply the ratio from subclause (I) of this clause by the sum of the excess funds from all non-state-owned hospitals.

(III) Add the result of subclause (II) of this clause to the projected total DSH payment for that hospital to calculate a revised projected payment amount from Pools One, Two and Three after Pass Two.

(8) Pass Three - additional allocation of DSH funds for rural public and rural public-financed hospitals. Rural public hospitals or rural public-financed hospitals that met the funding requirements described in paragraph (2)(C) of this subsection may be eligible for DSH funds in addition to the projected payment amounts calculated in paragraphs (4) - (7) of this subsection.

(A) For each rural public hospital or rural public financed hospital that met the funding requirements described in paragraph (2)(C) of this subsection, HHSC will determine the projected payment amount plus any previous payment amounts for the program year calculated in accordance with paragraphs (4) - (7) of this subsection, as appropriate.

(B) HHSC will subtract each hospital's projected payment amount plus any previous payment amounts for the program year from subparagraph (A) of this paragraph from each hospital's state payment cap to determine the maximum additional DSH allocation.

(C) The governmental entity that owns the hospital or leases the hospital may provide the non-federal share of funding through an intergovernmental transfer to fund up to the maximum additional DSH allocation calculated in subparagraph (B) of this paragraph. These governmental entities will be queried by HHSC as to the amount of funding they intend to provide through an intergovernmental transfer for this additional allocation. The query may be conducted through e-mail, through the various hospital associations or through postings on the HHSC website.

(D) Prior to processing any full or partial DSH payment that includes an additional allocation of DSH funds as described in this paragraph, HHSC will determine if such a payment would cause total DSH payments for the full or partial payment to exceed the available DSH funds for the payment as described in subsection (b)(2) of this section. If HHSC makes such a determination, it will reduce the DSH payment amounts rural public and rural public-financed hospitals are eligible to receive through the additional allocation as required to remain within the available DSH funds for the payment. This reduction will be applied proportionally to all additional allocations. HHSC will:

(i) determine remaining available funds by subtracting payment amounts for all DSH hospitals calculated in paragraphs (4) - (7) of this subsection from the amount in subsection (g)(2) of this section;

(ii) determine the total additional allocation supported by an intergovernmental transfer by summing the amounts supported by intergovernmental transfers identified in subparagraph (C) of this paragraph;

(iii) determine an available proportion statistic by dividing the remaining available funds from clause (i) of this subparagraph by the total additional allocation supported by an intergovernmental transfer from clause (ii) of this subparagraph; and

(iv) multiply each intergovernmental transfer supported payment from subparagraph (C) of this paragraph by the proportion statistic determined in clause (iii) of this subparagraph. The resulting product will be the additional allowable allocation for the payment.

(E) Rural public and rural public-financed hospitals that do not meet the funding requirements of paragraph (2)(C)(iii)(II) of this subsection are not eligible for participation on Pass Three.

(9) Reallocating funds if hospital closes, loses its license or eligibility, or files bankruptcy. If a hospital closes, loses its license, loses its Medicare or Medicaid eligibility, or files bankruptcy before receiving DSH payments for all or a portion of a DSH program year, HHSC will determine the hospital's eligibility to receive DSH payments going forward on a case-by-case basis. In making the determination, HHSC will consider multiple factors including whether the hospital was in compliance with all requirements during the program year and whether it can meet the audit requirements described in subsection (o) of this section. If HHSC determines that the hospital is not eligible to receive DSH payments going forward, HHSC will notify the hospital and reallocate that hospital's disproportionate share funds going forward among all DSH hospitals in the same category that are eligible for additional payments.

(10) HHSC will give notice of the amounts determined in this subsection.

(11) The sum of the annual payment amounts for state owned and non-state owned IMDs are summed and compared to the federal IMD limit. If the sum of the annual payment amounts exceeds the federal IMD limit, the state owned and non-state owned IMDs are reduced on a pro-rata basis so that the sum is equal to the federal IMD limit.

(12) For any DSH program year for which HHSC has calculated the hospital-specific limit described in §355.8066(c)(2) of this chapter, HHSC will compare the interim DSH payment amount as calculated in subsection (h) of this section to the hospital-specific limit.

(A) HHSC will limit the payment amount to the hospital-specific limit if the payment amount exceeds the hospital's hospital-specific limit.

(B) HHSC will redistribute dollars made available as a result of the capping described in subparagraph (A) of this paragraph

to providers eligible for additional payments subject to their hospital-specific limits, as described in subsection (l) of this section.

(i) Hospital located in a federal natural disaster area. A hospital that is located in a county that is declared a federal natural disaster area and that was participating in the DSH program at the time of the natural disaster may request that HHSC determine its DSH qualification and interim reimbursement payment amount under this subsection for subsequent DSH program years. The following conditions and procedures will apply to all such requests received by HHSC:

(1) The hospital must submit its request in writing to HHSC with its annual DSH application.

(2) If HHSC approves the request, HHSC will determine the hospital's DSH qualification using the hospital's data from the DSH data year prior to the natural disaster. However, HHSC will calculate the one percent Medicaid minimum utilization rate, the state payment cap, and the payment amount using data from the DSH data year. The hospital-specific limit will be computed based on the actual data for the DSH program year.

(3) HHSC will notify the hospital of the qualification and interim reimbursement.

(j) HHSC determination of eligibility or qualification. HHSC uses the methodology described in §355.8066(e) of this title to verify the data and other information used to determine eligibility and qualification under this section. The verification process includes:

(1) notice to hospitals of the data provided to HHSC by Medicaid contractors; and

(2) an opportunity for hospitals to request HHSC review of disputed data and other information the hospital believes is erroneous.

(k) Disproportionate share funds held in reserve.

(1) If HHSC has reason to believe that a hospital is not in compliance with the conditions of participation listed in subsection (e) of this section, HHSC will notify the hospital of possible noncompliance. Upon receipt of such notice, the hospital will have 30 calendar days to demonstrate compliance.

(2) If the hospital demonstrates compliance within 30 calendar days, HHSC will not hold the hospital's DSH payments in reserve.

(3) If the hospital fails to demonstrate compliance within 30 calendar days, HHSC will notify the hospital that HHSC is holding the hospital's DSH payments in reserve. HHSC will release the funds corresponding to any period for which a hospital subsequently demonstrates that it was in compliance. HHSC will not make DSH payments for any period in which the hospital is out of compliance with the conditions of participation listed in subsection (e)(1) and (2) of this section. HHSC may choose not to make DSH payments for any period in which the hospital is out of compliance with the conditions of participation listed in subsection (e)(3) - (7) of this section.

(4) If a hospital's DSH payments are being held in reserve on the date of the last payment in the DSH program year, and no request for review is pending under paragraph (5) of this subsection, the amount of the payments is not restored to the hospital, but is divided proportionately among the hospitals receiving a last payment.

(5) Hospitals that have DSH payments held in reserve may request a review by HHSC.

(A) The hospital's written request for a review must:

(i) be sent to HHSC's Director of Hospital Rate Analysis, Rate Analysis Department;

(ii) be received by HHSC within 15 calendar days after notification that the hospital's DSH payments are held in reserve; and

(iii) contain specific documentation supporting its contention that it is in compliance with the conditions of participation.

(B) The review is:

(i) limited to allegations of noncompliance with conditions of participation;

(ii) limited to a review of documentation submitted by the hospital or used by HHSC in making its original determination; and

(iii) not conducted as an adversarial hearing.

(C) HHSC will conduct the review and notify the hospital requesting the review of the results.

(l) Recovery and redistribution of DSH funds. As described in subsection (p) of [~~Notwithstanding any other provision of~~] this section, HHSC will recoup any overpayment of DSH funds made to a hospital, including an overpayment that results from HHSC error or that is identified in an audit. Recovered funds will be redistributed as described in subsection (r) of this section. [~~proportionately to DSH hospitals that had the same source of the non-federal share of the DSH payment in the program year in which the overpayment occurred and that are eligible for additional payments for that program year. For example, funds recovered from state-owned hospitals will be redistributed first to other state-owned hospitals that are eligible for additional payments for that program year. If there are no hospitals eligible for additional payments for that program year that had the same source of the non-federal share of the recovered funds, any remaining funds will be distributed as follows:~~]

[~~(1) the non-federal share will be returned to the governmental entity that provided it during the program year;~~]

[~~(2) the federal share will be distributed proportionately among all hospitals eligible for additional payments that have a source of the non-federal share of the payments; and~~]

[~~(3) the federal share that does not have a source of non-federal share will be returned to CMS.~~]

(m) Failure to provide supporting documentation. HHSC will exclude data from DSH calculations under this section if a hospital fails to maintain and provide adequate documentation to support that data.

(n) Voluntary withdrawal from the DSH program.

(1) HHSC will recoup all DSH payments made during the same DSH program year to a hospital that voluntarily terminates its participation in the DSH program. HHSC will redistribute the recouped funds according to the distribution methodology described in subsection (l) of this section.

(2) A hospital that voluntarily terminates from the DSH program will be ineligible to receive payments for the next DSH program year after the hospital's termination.

(3) If a hospital does not apply for DSH funding in the DSH program year following a DSH program year in which it received DSH funding, even though it would have qualified for DSH funding in that year, the hospital will be ineligible to receive payments for the next DSH program year after the year in which it did not apply.

(4) The hospital may reapply to receive DSH payments in the second DSH program year after the year in which it did not apply.

(o) Audit process.

(1) Independent certified audit. HHSC is required by the Social Security Act (Act) to annually complete an independent certified audit of each hospital participating in the DSH program in Texas. Audits will comply with all applicable federal law and directives, including the Act, the Omnibus Budget and Reconciliation Act of 1993 (OBRA '93), the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), pertinent federal rules, and any amendments to such provisions.

(A) Each audit report will contain the verifications set forth in 42 CFR §455.304(d).

(B) The sources of data utilized by HHSC, the hospitals, and the independent auditors to complete the DSH audit and report include:

(i) The Medicaid cost report;

(ii) Medicaid Management Information System data; and

(iii) Hospital financial statements and other auditable hospital accounting records.

(C) A hospital must provide HHSC or the independent auditor with the necessary information in the time specified by HHSC or the independent auditor. HHSC or the independent auditor will notify hospitals of the required information and provide a reasonable time for each hospital to comply.

(D) A hospital that fails to provide requested information or to otherwise comply with the independent certified audit requirements may be subject to a withholding of Medicaid disproportionate share payments or other appropriate sanctions.

(E) HHSC will recoup any overpayment of DSH funds made to a hospital that is identified in the independent certified audit as described in this subsection and will redistribute the recouped funds to DSH providers that are eligible for additional payments, subject to their [~~the~~] hospital-specific limits, as described in subsections [~~subsection~~] (l) and (r) of this section.

(F) Review of preliminary audit finding of overpayment.

(i) Before finalizing the audit, HHSC will notify each hospital that has a preliminary audit finding of overpayment.

(ii) A hospital that disputes the finding or the amount of the overpayment may request a review in accordance with the following procedures.

(I) A request for review must be received by the HHSC Rate Analysis Department in writing by regular mail, hand delivery or special mail delivery, from the hospital within 30 calendar days of the date the hospital receives the notification described in clause (i) of this subparagraph.

(II) The request must allege the specific factual or calculation errors the hospital contends the auditors made that, if corrected, would change the preliminary audit finding.

(III) All documentation supporting the request for review must accompany the written request for review or the request will be denied.

(IV) The request for review may not dispute the federal audit requirements or the audit methodologies.

(iii) The review is:

(I) limited to the hospital's allegations of factual or calculation errors;

(II) solely a data review based on documentation submitted by the hospital with its request for review or that was used by the auditors in making the preliminary finding; and

(III) not an adversarial hearing.

(iv) HHSC will submit to the auditors all requests for review that meet the procedural requirements described in clause (ii) of this subparagraph.

(I) If the auditors agree that a factual or calculation error occurred and change the preliminary audit finding, HHSC will notify the hospital of the revised finding.

(II) If the auditors do not agree that a factual or calculation error occurred and do not change the preliminary audit finding, HHSC will notify the hospital that the preliminary finding stands and will initiate recoupment proceedings as described in this section.

(2) Additional audits. HHSC may conduct or require additional audits.

(p) Recoupment.

(1) In the event of an overpayment identified by HHSC, or its contractor, or a disallowance by CMS of federal financial participation related to a hospital's receipt or use of payments under this section, HHSC may recoup an amount equal to the amount of the overpayment or disallowance.

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts), 42 CFR Part 455, and the Texas Government Code Chapter 403. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows.

(A) HHSC will recoup from the hospital against which any overpayment was made or disallowance was directed.

(B) If, within 30 days of the hospital's receipt of HHSC's written notice of recoupment, the hospital has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the hospital until HHSC has recovered an amount equal to the amount overpaid or disallowed.

(q) Reconciliation. HHSC will reconcile actual costs incurred by the hospital for the demonstration year with disproportionate share hospital (DSH) payments, if any, made to the hospital for the same period:

(1) if a hospital received payments in excess of its actual costs, the overpaid amount will be recouped from the hospital, as described in subsection (o) of this section; and

(2) if a hospital received payments less than its actual costs, and if HHSC has available DSH funding for the DSH program year in which the costs were accrued, the hospital may receive reimbursement for some or all of those actual documented unreimbursed costs.

(r) Redistribution of Recouped Funds. Following the recoupments described in subsection (p) of this section, HHSC will redistribute the recouped funds to eligible providers. For purposes of this subsection, an eligible provider is a provider who has room remaining in its final remaining Hospital-specific limit (HSL) calculated in the reconciliation described in subsection (q) of this section after considering all DSH payments made for that DSH program year. Recouped funds from state providers will be redistributed proportionately to el-

igible state providers based on the percentage that each eligible state provider's remaining final HSL (calculated in the reconciliation as described in subsection (q) of this section) is of the total remaining final HSL (calculated in the reconciliation described in subsection (q) of this section) of all eligible state providers. Recouped funds from non-state providers may be redistributed proportionately to state providers or eligible non-state providers as follows.

(1) For DSH years 2011-2017 (October 1, 2011 - September 30, 2017) and for DSH years 2020 and after (October 1, 2019 and after), HHSC will use the following methodology to redistribute recouped funds:

(A) the non-federal share will be returned to the governmental entity that provided it during the DSH program year;

(B) the federal share will be distributed proportionately among all providers eligible for additional payments that have a source of the non-federal share of the payments; and

(C) the federal share that does not have a source of non-federal share will be returned to CMS.

(2) For DSH years 2018-2019 (October 1, 2017 - September 30, 2019), HHSC will use the following methodology to redistribute recouped funds.

(A) To calculate a weight that will be applied to all providers, HHSC will divide the final hospital-specific limit described in §355.8066(c)(2) of this chapter (relating to Hospital-Specific Limit Methodology) by the final hospital-specific limit described in §355.8066(c)(2) of this chapter that has not offset payments for third-party and Medicare claims and encounters where Medicaid was a secondary payer. HHSC will add 1 to the quotient. Any provider who has a resulting weight of less than 1 will receive a weight of 1.

(B) HHSC will make a first pass allocation by multiplying the weight described in subparagraph (A) of this paragraph by the final remaining HSL calculated in the reconciliation described in subsection (q) of this section. HHSC will divide the product by the total remaining HSLs for all providers. HHSC will multiply the quotient by the total amount of recouped dollars available for redistribution described in subsection (p)(1) of this section.

(C) After the first pass allocation, HHSC will cap providers at their final remaining HSL. A second pass allocation will occur in the event providers were paid over their final remaining HSL after the weight in subparagraph (A) of this paragraph was applied. HHSC will calculate the second pass by dividing the final remaining HSL calculated in the reconciliation described in subsection (q) of this section by the total remaining HSLs for all providers after accounting for first pass payments. HHSC will multiply the quotient by the total amount of funds in excess of total HSLs for providers capped at their total HSL.

(s) Advance Payments.

(1) In a DSH program year in which payments will be delayed pending data submission or for other reasons, HHSC may make advance payments to hospitals that meet the eligibility requirements described in subsection (c) of this section, meet a qualification in subsection (d) of this section, meet the conditions of participation in subsection (e) of this section, and submitted an acceptable disproportionate share hospital application for the preceding DSH program year from which HHSC calculated an annual maximum disproportionate share hospital payment amount for that year.

(2) Advance payments are considered to be prior period payments.

(3) A hospital that did not submit an acceptable disproportionate share hospital application for the preceding DSH program year is not eligible for an advance payment.

(4) If a partial year disproportionate share hospital application was used to determine the preceding DSH program year's payments, data from that application may be annualized for use in computation of an advance payment amount.

(5) The amount of the advance payments:

(A) are divided into three payments prior to a hospital receiving its final DSH payment amount; and

(B) in DSH program years 2020 and after a provider that received a payment in the previous DSH program year is eligible to receive an advanced payment, and the calculations for advanced payment 1, 2, and 3 are as follows:

(i) HHSC determines a percentage of the pool to pay out in the advanced payments; and

(ii) the pool amount is fed through the previous DSH program year calculation to determine the advanced payments.

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 April 1, 2021.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (737) 203-7842

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL GRADUATION

19 TAC §74.1023

The Texas Education Agency (TEA) proposes new §74.1023, concerning the financial aid application requirement for high school graduation. The proposed new rule would reflect the requirements in House Bill (HB) 3, 86th Texas Legislature, 2019, that each student 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 and that school districts and open-enrollment charter schools report completion information to TEA.

BACKGROUND INFORMATION AND JUSTIFICATION: The 86th Texas Legislature, 2019, passed HB 3, adding new Texas Education Code (TEC), §28.0256, to require a student to complete a financial aid application, either the FAFSA or the TASFA, in order to graduate. The statute provides an exception for students to opt out of the financial aid application requirement

by submitting a form signed by a parent, guardian, or student aged 18 years old or older that authorizes the student to decline to comply with the financial aid application graduation requirement. A high school counselor may also authorize a student to decline to comply with the financial aid application graduation requirement for good cause. The opt-out form must be approved by TEA. At the January 2021 State Board of Education (SBOE) meeting, the SBOE took action to approve proposed amendment to 19 TAC Chapter 74, Curriculum Requirements, Subchapter B, Graduation Requirements, §74.11, High School Graduation Requirements, to add the financial aid application requirement, effective beginning with students enrolled in Grade 12 during the 2021-2022 school year.

Proposed new §74.1023 would establish requirements for school districts and open-enrollment charter schools regarding the implementation of the financial aid application requirement.

New subsections (b) and (c) would address the conditions under which a student may decline to complete a financial aid application by formally opting out and would establish requirements for the opt-out form.

New subsection (d) would establish standards for required notifications school districts and open-enrollment charter schools must provide to students regarding the financial aid requirement, the financial aid applications, and the opt-out form and would establish timelines for the distribution of the information.

New subsection (e) would identify the methods school districts and open-enrollment charter schools must require as proof that a student has completed and submitted the FAFSA or TASFA. This subsection would also permit school districts and open-enrollment charter schools to adopt a local policy for the method by which a student must provide proof that the student has completed a FAFSA. The subsection would also require school districts and open-enrollment charter schools to adopt a local policy for the method by which a student must provide proof that the student has completed a TASFA.

New subsection (f) would establish a requirement for school districts and open-enrollment charter schools to report the number of students who completed and submitted a financial aid application and the number of students who submitted exceptions in accordance with TEC, §28.0256(b).

New subsection (g) would ensure that school districts and open-enrollment charter schools maintain student financial aid application information securely and ensure compliance with federal and state law regarding the confidentiality of student educational information.

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 open-enrollment charter schools to monitor and report the completion of the financial aid application requirement, which will have a cost to the state. The 86th Texas Legislature, 2019, appropriated $1.5 million for the creation of a database to track TASFA completion electronically.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation by requiring students to either submit a financial aid application or to opt out of the graduation requirement. Additionally the proposed rulemaking would add requirements for school districts and open-enrollment charter schools to distribute notifications to students regarding the requirement and to report financial aid application requirement data to TEA.

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: 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 promoting students' completion of financial aid applications and eligibility to receive financial aid. The proposal would also establish clear timelines and standards for school districts and open-enrollment charter schools related to implementation of the financial aid application requirement. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have a data and reporting impact. TEC, §28.026(e)(2), requires each school district to report to the agency the number of students who complete and submit a financial aid application and the number of students who opted out of the financial aid requirement. The financial aid application graduation requirement will be reported through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) and indicated on the high school transcript.

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 April 16, 2021, and ends May 17, 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 April 16, 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/.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §28.0256(a), as added by House Bill (HB) 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. TEC, §28.0256(c), allows a student to formally opt out of the financial aid application requirement by submitting a TEA-approved form; TEC, §28.0256(e)(1), as added by HB 3, 86th Texas Legislature, 2019, which requires the commissioner of education by rule to establish timelines for the distribution to students of the FAFSA and TASFA and for the submission of the opt-out form. The rule is required to include standards for information school districts and open-enrollment charter schools must provide to students regarding filling out the FAFSA and TASFA and the option for students to decline to complete a financial aid application. Additionally, the rule is required to establish the method by which a student must provide proof to the school district or open-enrollment charter school that the student has submitted a FAFSA or TASFA; TEC, §28.0256(e)(2), as added by HB 3, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules regarding the requirement that school districts report information regarding the number of students who completed and submitted a financial aid application and the number of students who received an exception by submitting an opt-out form; and TEC, §28.0256(e)(3), as added by HB 3, 86th Texas Legislature, 2019, which requires the commissioner to ensure compliance with federal law regarding confidentiality of student educational information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), and any state law relating to the privacy of student information.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §28.0256(a), (c), and (e), as added by House Bill 3, 86th Texas Legislature, 2019.

§74.1023. Financial Aid Application Requirement for High School Graduation.

(a) In accordance with Texas Education Code (TEC), §28.0256, beginning with students enrolled in Grade 12 during the 2021-2022 school year, a student shall complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA) as a requirement for receiving a high school diploma.

(b) A student may opt out of the financial aid application requirement in subsection (a) of this section under one of the following conditions:

(1) the student's parent or other person standing in parental relation submits a signed form indicating that the parent or other person authorizes the student to decline to complete and submit the financial aid application;

(2) the student signs and submits the form described by paragraph (1) of this subsection on the student's own behalf if the student is 18 years of age or older or is emancipated under the Texas Family Code, Chapter 31; or

(3) a school counselor signs and submits the form described by paragraph (1) of this subsection indicating that the school counselor authorizes the student to decline to complete and submit the financial aid application for good cause, as determined by the school counselor. In accordance with TEC, §28.0256(d), if a school counselor notifies a school district that a student has declined to complete and submit a financial aid application for good cause, the school counselor may not indicate details regarding what constitutes good cause.

(c) The board of trustees for each school district and open-enrollment charter school shall adopt the standard opt-out form provided by the Texas Education Agency (TEA) for the purpose of the exceptions under subsection (b) of this section.

(1) The opt-out form shall be available in English, Spanish, and any other language spoken by a majority of the students enrolled in a bilingual education or special language program under TEC, Chapter 29, Subchapter B, in the district or charter school. Districts and charter schools are responsible for translations not provided by TEA.

(2) The opt-out form must include the student's signature of intent to decline to complete a financial aid application prior to the student's anticipated graduation date.

(d) Each school district and open-enrollment charter school shall provide students with the following notifications regarding the financial aid application requirement.

(1) Standard information regarding the financial aid requirement and the exceptions under subsection (b) of this section shall be provided at the time a student first registers for one or more classes required for high school graduation.

(2) Detailed information regarding instructions for the completion and submission of a financial aid application shall be provided to a student at the beginning of Grade 12 or at the time a student in Grade 12 transfers into a high school from a non-public school or a public school outside of Texas. The instructions shall include:

(A) an explanation of the FAFSA and TASFA and the difference between the two;

(B) instructions for how to access the FAFSA and TASFA, including key dates and deadlines for completion and submission;

(C) resources available to support completion and submission of the FAFSA and TASFA;

(D) documents and information required to complete the FAFSA or TASFA; and

(E) contact information for school staff or local community resources available to support completion of the forms.

(3) Options available to a student under subsection (b) of this section if a student wishes to decline to complete and submit a financial aid application shall be provided to a student at the beginning of Grade 12 or at the time a student in Grade 12 transfers into a high school from a non-public school or a public school outside of Texas. The options shall include:

(A) the opt-out form and explanation of required signatures; and

(B) notification that if the student chooses to opt out for the purposes of graduation, the student will still be eligible to complete the FAFSA or TASFA that year or in subsequent years.

(e) Each school district and open-enrollment charter school shall require one of the following methods of proof that a student has completed and submitted the FAFSA or TASFA as required by this section.

(1) Completion and submission of the FAFSA shall be confirmed through one of the following methods:

(A) ApplyTexas Counselor Suite FAFSA data;

(B) notification from the United States Department of Education that demonstrates a student has completed and submitted a FAFSA; or

(C) a local policy developed by a school district or an open-enrollment charter school for the method by which a student must provide proof that the student has completed a FAFSA.

(2) School districts and open-enrollment charter schools shall develop a local policy for the method by which a student must provide proof that the student has completed a TASFA.

(f) Each school district and open-enrollment charter school shall report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) the following information not later than December 1 of each school year for students awarded diplomas in the previous school year:

(1) the number of students who completed and submitted a financial aid application; and

(2) the number of students who submitted an exception.

(g) Each school district and open-enrollment charter school shall maintain student financial aid application information securely and ensure compliance with federal law regarding the confidentiality of student educational information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), and any state law relating to the privacy of student information.

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
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Texas Education Agency
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CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001 is not included in the print version of the Texas Register. The figure is available in the on-line version of the April 16, 2021, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §97.1001, concerning accountability and performance monitoring. The proposed amendment would adopt in rule applicable excerpts of the *2021 Accountability Manual.*

BACKGROUND INFORMATION AND JUSTIFICATION: TEA has adopted its academic accountability manual in rule since 2000. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree from those applied in the prior year. The intention is to update 19 TAC §97.1001 annually to refer to the most recently published accountability manual.

The proposed amendment to 19 TAC §97.1001 would adopt excerpts of the *2021 Accountability Manual* into rule as a figure. The excerpts, Chapters 1-11 of the *2021 Accountability Manual,* specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. Ratings may be revised as a result of investigative activities by the commissioner as authorized under Texas Education Code, §39.056 and §39.057.

Following is a chapter-by-chapter summary of the changes for this year's manual. In every chapter, dates and years for which data are considered would be updated to align with 2021 accountability.

Chapter 1 gives an overview of the entire accountability system. Introductory language would be revised to note that the manual explains the processes used to produce 2021 accountability data reports instead of to calculate ratings and award distinction designations. The link to accountability development proposals and supporting materials would be updated. The *Not Rated: Declared State of Disaster* description would be updated to remove closure of schools during the state's testing window as a cause for the rating label. The summer administration would be removed from the chart depicting the accountability subset rule as well as from the descriptive bullets below the chart. The "STAAR Retest Performance" section would be updated to indicate that Grades 5 and 8 retests would not be considered, as this administration did not occur. The "STAAR Retest Performance" section would also be updated to reflect that if a student's spring 2021 score is the best result, the student would not meet the accountability subset rule for inclusion at Campus A or Campus B. A section would be added to describe the process for SAT/ACT inclusion. The career and technical education (CTE) and military enlistment indicators would be removed from the "TSDS PEIMS-Based Indicators" list, as these would not be considered for 2021. A note describing the rationale for the removal of military enlistment data would be added.

Chapter 2 describes the "Student Achievement" domain. The "Overview" section would be updated to include that for 2021, component raw scores would be displayed; neither raw nor scaled scores would be calculated for the "Student Achievement" domain. The "STAAR Component-Assessments Evaluated" section would be updated to make conforming changes and to include SAT/ACT results for accelerated testers. The "STAAR Component-Substitute Assessments" section would be removed. The "STAAR Component-Minimum Size Criteria and Small Numbers Analysis" section would be updated to add SAT/ACT methodology, including assessments results, students evaluated, methodology, and accountability subset rules. The "College, Career, and Military Readiness Component" section would be updated to include a deadline of August 31 immediately following high school graduation for an associate degree, to remove the "CTE Coherent Sequence Coursework Aligned with Industry Based Certifications" indicator, and to note data discrepancies in Armed Forces enlistment data. The "CTE Coherent Sequence Coursework Transition" section would be removed. References to the half point credit would be removed from the "College, Career, and Military Readiness

Component-Methodology" section. Clarifying language would be added to the "Graduation Rate" section, noting that the best rate is used. Clarifying language would also be added to the annual dropout rate calculations.

Chapter 3 describes the "School Progress" domain. The "Overview" section would be updated to indicate that for 2021, neither raw nor scaled scores would be calculated for the "School Progress" domain. The "School Progress, Part A" section would be updated to indicate that the U.S. Department of Education (USDE) granted Texas a waiver of assessment, accountability and school identification, and certain related reporting requirements for the 2019-2020 school year. As a result, Texas would not calculate School Progress: Part A: Academic Growth for 2021. The remaining text of School Progress, Part A would be removed. The "Part B: Relative Performance-Assessments Evaluated" section would be updated to remove substitute assessments. A note would be added to the "Part B: Relative Performance Score" section to indicate that component raw scores would be displayed; neither raw nor scaled scores would be calculated. The following example subsection and "Domain Rating Calculation" section would be removed.

Chapter 4 describes the "Closing the Gaps" domain. The "Overview" section would be updated to indicate that for 2021, component raw scores would be displayed; neither raw nor scaled scores would be calculated for the "Closing the Gaps" domain. The "Academic Achievement-Assessments Evaluated" section would be updated to indicate that SAT/ACT results for accelerated testers would be included. The "Academic Achievement-Substitute Assessments" and the "Academic Growth Components" sections would be removed. A note would be inserted to state that because of the USDE waiver, Texas does not have the data necessary to calculate Academic Growth. The remainder of the Academic Growth sections would be removed. Text in the "Federal Graduation Status" section referring to Academic Growth would be removed. The "Four-Year Graduation Rate Target" section would be amended to remove text indicating that Texas requested to amend the graduation rate methodology. The "Federal Graduation Status-Methodology" section would be amended to include updated graduation rate indicator criteria. The "English Language Proficiency Component" section would be updated to remove language referring to the 2020 rating label and add that either a 2019 or 2020 Texas English Language Proficiency Assessment System (TELPAS) composite rating may be used. The "Student Achievement Domain Score" section would be updated to include SAT/ACT results for accelerated testers. The "Student Achievement Domain Score: STAAR Component Only-Substitute Assessments" section would be removed. The College, Career, and Military Readiness Performance Status would be updated to add a deadline of August 31 immediately following high school graduation for an associate degree, to remove the "CTE Coherent Sequence Coursework" criteria, and to add a note describing the data discrepancies in the Armed Forces enlistment data. The "Participation Status" section would be updated to remove the reference to substitute assessments and to note that due to the Every Student Succeeds Act (ESSA) Plan 2021 Addendum, TEA requested to only report reading and mathematics participation rates for districts and campuses for 2021. The "Calculating a Closing the Gaps Domain Score" section would be removed. Baseline graduation rates would be added to the "2021 Closing the Gaps Performance Targets" chart.

Chapter 5 describes how the overall ratings are calculated. Due to all campuses and districts receiving *Not Rated: Declared State of Disaster* in 2021, all language after the "Overview" section would be removed.

Chapter 6 describes distinction designations. Chapter 6 would be updated to clarify that in 2021, all districts and campuses would receive a *Not Rated: Declared State of Disaster* label and that distinction designations would not be awarded. Campus comparison groups would still be calculated, so this section would remain. All other sections in this chapter would be removed.

Chapter 7 describes the pairing process and the alternative education accountability (AEA) provisions. The "Pairing Process" section would be updated to remove language stating that the pairing process was not necessary in 2020. The 50% student enrollment in Grades 6-12 criteria would be updated to 90% in the "AEA Campus Registration Criteria" section. Language in the "AEA Charter School Identification" section would be clarified.

Chapter 8 describes the process for appealing ratings. Language would be added to indicate that in 2021, districts and campuses cannot appeal the rating of *Not Rated: Declared State of Disaster.* All other language would be removed.

Chapter 9 describes the responsibilities of TEA, the responsibilities of school districts and open-enrollment charter schools, and the consequences to school districts and open-enrollment charter schools related to accountability and interventions. Clarifying language would be added to indicate that the rating labels used to determine multiple-year unacceptable status include *F, Improvement Required, Academically Unacceptable,* or *AEA: Academically Unacceptable.* This section would also clarify that an overall rating of *D* or *F* in 2019 and in 2022 would be considered consecutive. Language would be added stating that due to the lack of 2021 accountability ratings, the campuses identified for Public Education Grant (PEG) based on 2019 ratings would remain on the 2022-2023 PEG List. The "Campus Identification Numbers" section is updated to clarify that *Academically Unacceptable* and *AEA: Academically Unacceptable* are also included in ratings history that may be linked across campus numbers.

Chapter 10 provides information on the federally required identification of schools for improvement. The "Overview" section would be updated to acknowledge the addendum to the state's ESSA plan to the USDE, requesting that existing comprehensive support and improvement, targeted support and improvement, and additional targeted support labels be retained for 2021-2022, that the identification of the next cohort be delayed one year until August 2022, that the escalation of three-year additional targeted support (ATS) campuses to comprehensive status be postponed until August 2023, that campuses must opt in for continued interventions to receive funding for 2021-2022, and that current comprehensive support and improvement campuses identified solely by the graduation rate criteria may exit if the campus meets the graduation rate exit criteria. The "Overview" section would also include the updated timeline for Title I campuses identified for ATS for three consecutive years and exit criteria for comprehensive support and improvement campuses. All other sections in Chapter 10 would be removed.

Chapter 11 describes the local accountability system (LAS). Language stating the legislative session that established LAS would be removed. The "Overview" section would be updated to clarify that in 2021, districts and campuses receive a *Not Rated: Declared State of Disaster* label overall and in each domain. Clari-

fying language would be added in the "LAS Implementation" and "Ratings Under LAS" sections. The "2021 LAS Ratings" section would be amended to clarify that in 2021, districts and campuses receive a *Not Rated: Declared State of Disaster* label overall and in each domain and that the 2021 state and LAS ratings are not combined. All other language in this section would be removed. The "LAS Appeals" section would be amended to clarify that neither the 2021 state nor LAS rating labels can be appealed. All other language in this section would be removed.

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, 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 limit an existing regulation due to its effect on school accountability for 2021.

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 expand 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 continuing to inform the public of the existence of annual manuals specifying rating procedures for public schools by including this rule in the Texas Administrative Code. 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 April 16, 2021, and ends May 17, 2021. A public hearing on the proposal is scheduled for 9:00 a.m. on April 30, 2021. The public may participate in the hearing virtually by linking to the meeting at https://us02web.zoom.us/meeting/register/tZUtdOGgqj0jGtbMtwqQYIa9bP2QCRH08upD. Parties interested in testifying must register online by 9:00 a.m. on the day of the hearing and are encouraged to also send written testimony to performance.reporting@tea.texas.gov. Individuals in need of a translator or sign language services should contact the TEA Division of Performance Reporting by April 23, 2021. The hearing will conclude once all who have registered have been given the opportunity to comment. Questions about the hearing should be directed to the TEA Division of Performance Reporting at (512) 463-9704.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §39.052(a) and (b)(1)(A), which require the commissioner to evaluate and consider the performance on achievement indicators described in TEC, §39.053(c), when determining the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which requires the commissioner to adopt a set of performance indicators related to the quality of learning and achievement in order to measure and evaluate school districts and campuses; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which allows the commissioner to adopt indicators and standards under TEC, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §29.081(e), (e-1), and (e-2), which define criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; and TEC, §12.104(b)(3)(L), which subjects open-enrollment charter schools to the rules adopted under public school accountability in TEC, Chapter 39.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053; 39.054; 39.0541; 39.0548; 39.055; 39.151; 39.201; 39.2011; 39.202; 39.203; 29.081(e), (e-1), and (e-2); and 12.104(b)(3)(L).

§97.1001. Accountability Rating System.

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053, 39.054, 39.0541, 39.0548, 39.055, 39.151, 39.201, 39.2011, 39.202, 39.203, 29.081(e), (e-1), and (e-2), and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and proce-

dures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

(1) indicators, standards, and procedures used to determine district ratings;

(2) indicators, standards, and procedures used to determine campus ratings;

(3) indicators, standards, and procedures used to determine distinction designations; and

(4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2021 [~~2020~~] are based upon specific criteria and calculations, which are described in excerpted sections of the *2021* [~~*2020*~~] *Accountability Manual* provided in this subsection.

Figure: 19 TAC §97.1001(b)

[~~Figure: 19 TAC §97.1001(b)~~]

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.057.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

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

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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER A. GENERAL

22 TAC §571.15

The Texas Board of Veterinary Medical Examiners (Board) proposes this amendment to §571.15, concerning temporary veterinary license. The purpose of the proposed amendment is to help make temporary licensure less restrictive for out of state veterinarians who wish to volunteer their services in high need areas in Texas.

John Helenberg, Executive Director, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments as a result of enforcing or administering the rule. Mr. Helenberg has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Mr. Helenberg has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that more out of state veterinarians may pursue temporary licensure to provide much needed volunteer or low-cost veterinary services throughout the state.

According to Executive Director John Helenberg, for the first five years that the rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program. Implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would limit an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Valerie Mitchell, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *Valerie.mitchell@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The rule is proposed under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of §801.151(b), Occupations Code, which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the veterinary medicine profession. No other statutes, articles, or codes are affected by the proposal.

§571.15. Temporary Veterinary License.

(a) Eligibility and Application Requirements. An application for a temporary veterinary license shall be submitted to the Board on the form provided by the Board. To be complete, an application must include at least the following items:

(1) a letter of good standing issued within the previous six months from another state or jurisdiction of the United States or foreign country with substantially similar licensing requirements in which the applicant is currently actively licensed;

(2) an attestation that the applicant is a graduate of a school or college of veterinary medicine that is approved by the Board and accredited by the Council on Education of the American Veterinary Medical Association (AVMA), or that possesses an Educational Commission for Foreign Veterinary Graduates (ECFVG) Certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate;

(3) a copy of the applicant's driver's license, passport, or other government-issued photo identification; and

(4) the license number and signature of the Texas veterinarian who agrees to provide general supervision of the applicant's practice of veterinary medicine for the duration of the temporary veterinary license.

(b) Scope and Duration.

(1) A temporary veterinary license is valid only for a specific patient, client, continuing education course, or task.

(2) A temporary veterinary license is valid for 60 days from issuance. The 60-day period does not have to run consecutively. A temporary veterinary license may not be renewed or reissued. A person may not be issued more than two temporary veterinary licenses in a calendar year.

(c) Penalties.

(1) A person who exceeds the scope or duration of a temporary veterinary license, or who violates the Act or Board Rules while practicing under a temporary veterinary license, is subject to:

(A) disciplinary action under Occupations Code §801.401;

(B) a cease and desist order pursuant to Occupations Code §801.508;

(C) future denial of any type of license issued by the Board for which the person may otherwise be eligible;

(D) referral to any jurisdiction in which the person is currently licensed; and

(E) referral to an appropriate law enforcement agency.

(2) A Texas veterinarian who signs an application for a temporary veterinary license agreeing to provide general supervision of the applicant's practice of veterinary medicine for the duration of the temporary veterinary license is subject to discipline if the Texas veterinarian fails to provide such supervision.

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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John Helenberg
Executive Director
Texas Board of Veterinary Medical Examiners
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CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §573.27

The Texas Board of Veterinary Medical Examiners (Board) proposes this amendment to §573.27, concerning honesty, integrity and fair dealing. The purpose of the proposed amendment is to ensure that the rule for honesty, integrity and fair dealing is more inclusive and reflective of the types of complaints received and adjudicated by the Board. This rule modifies existing regulations.

John Helenberg, Executive Director, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments as a result of enforcing or administering the rule. Mr. Helenberg has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Mr. Helenberg has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that potentially anti-competitive language is removed from the Board's rules and more complaints may now fall under this rule, giving the Board and public greater flexibility when investigating and adjudicating complaints.

Mr. Helenberg has determined that there are no anticipated adverse economic effects on small business, micro-businesses, or rural communities as a result of the rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

According to Mr. Helenberg, for the first five years that the rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program. Implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would expand an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Valerie Mitchell, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *Valerie.mitchell@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* **Comments must be received within 30 days after publication of this proposal in order to be considered.**

The rule is proposed under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of §801.151(b), Occupations Code, which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the veterinary medicine profession.

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

§573.27. Honesty, Integrity and Fair Dealing.

Licensees shall conduct their practice with honesty, integrity, and fair dealing [~~to clients in time and services rendered, and in the amount charged for services facilities, appliance and drugs~~].

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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John Helenberg
Executive Director
Texas Board of Veterinary Medical Examiners
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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.65

The Texas Board of Veterinary Medical Examiners (Board) proposes this amendment to §573.65, concerning proof of acceptable continuing education. The purpose of the proposed amendment is to allow licensees the flexibility to earn continuing education hours in whatever format they prefer, whether that be live or virtual.

John Helenberg, Executive Director, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments as a result of enforcing or administering the rule. Mr. Helenberg has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Mr. Helenberg has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that Board licensees have more flexibility to earn their required continuing education hours, requiring less time out of the office which helps increase access to veterinary services.

Mr. Helenberg has determined that there are no anticipated adverse economic effects on small business, micro-businesses, or rural communities as a result of the rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

For the first five years that the rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Valerie Mitchell, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *Valerie.mitchell@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* **Comments must be received within 30 days after publication of this proposal in order to be considered.**

The rule is proposed under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of §801.151(b), Occupations Code, which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the veterinary medicine profession.

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

§573.65. Proof of Acceptable Continuing Education.

(a) (No change.)

(b) Distribution of Continuing Education Hours.

(1) Veterinary Licensees.

(A) Of the required seventeen (17) hours of continuing education for veterinary licensees, no more than five (5) hours may be derived from either:

(i) correspondence courses; or

(ii) practice management courses.

(B) Hours claimed for self study shall not exceed three (3) hours.

~~[(C) Hours claimed for online interactive, participatory programs shall not exceed 10 hours.]~~

~~[(D) Notwithstanding the allowable hours provided in subparagraphs (A) - (C) of this paragraph, at least seven (7) hours must be obtained from personal attendance at live courses, seminars and meetings providing continuing education.]~~

(2) Equine Dental Provider Licensees.

(A) None of the required six (6) hours of continuing education for equine dental provider licensees may be derived from either correspondence courses or practice management courses.

(B) Hours claimed from self study shall not exceed one (1) hour.

~~[(C) Hours claimed from online interactive, participatory programs shall not exceed two (2) hours.]~~

~~[(D) Notwithstanding the allowable hours provided in subparagraphs (A) - (C) of this paragraph, at least four (4) hours must be obtained from personal attendance at live courses and seminars providing continuing education.]~~

(3) Licensed Veterinary Technicians.

(A) Licensed veterinary technicians are required to complete ten (10) hours of continuing education annually. Of the required ten (10) hours, no more than two (2) hours of continuing education for licensed veterinary technicians may be derived from practice management.

(B) No more than four (4) hours of continuing education for licensed veterinary technicians may be derived from correspondence courses.

(C) Hours claimed from self study shall not exceed two (2) hours.

[(D) Hours claimed from online interactive, participatory programs shall not exceed four (4) hours.]

[(E) Notwithstanding the allowable hours provided in subparagraphs (A) - (D) of this paragraph, at least six (6) hours must be obtained from personal attendance at live courses and seminars providing continuing education.]

(c) (No change.)

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

Filed with the Office of the Secretary of State on April 5, 2021.

TRD-202101414
John Helenberg
Executive Director
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: May 16, 2021
For further information, please call: (512) 305-7555x3

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER B. INSURANCE CODE, CHAPTER 5, SUBCHAPTER B

DIVISION 2. REGULATION OF EXCESS LIABILITY INSURANCE

28 TAC §5.1201

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to repeal Division 2 of 28 TAC Chapter 5, consisting of §5.1201, concerning the regulation of umbrella liability insurance. The repeal is necessary because Senate Bill 14, 78th Legislature, 2003, made the requirements in §5.1201 obsolete, and §5.1201 is the only section in Division 2.

EXPLANATION. Section 5.1201 was adopted to ensure that umbrella liability insurance requirements aligned with promulgated forms. However, under changes made to the Insurance Code by SB 14, insurers are no longer restricted to promulgated forms for the underlying policies. Therefore, it is not necessary to have a rule that aligns the requirements for umbrella policies with promulgated forms.

In addition, §5.1201 requires each insurer writing personal or commercial umbrella liability insurance to file rates and rules on a prior-approval basis, and file policy forms and statistical data. However, SB 14 repealed the prior-approval requirements in Insurance Code art. 5.15, which applied to personal umbrella liability insurance, and it also repealed Insurance Code art. 5.13-2, which applied to commercial liability insurance. Currently, rates and rules for both types of umbrella liability insurance must be filed under Insurance Code §2251.101, policy forms must be filed under Insurance Code §2301.006, and statistical data must be filed under Insurance Code §38.205. Considering these statutory requirements, the provisions in §5.1201 addressing this are no longer necessary.

As a result, TDI proposes to repeal §5.1201. Because this section is the only one in Division 2, TDI also proposes the repeal of the entire division.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director, Property and Casualty Lines Office, has determined that during each year of the first five years the proposed repeal is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section. Ms. Baker made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Baker does not anticipate any measurable effect on local employment or the local economy because of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed repeal is in effect, Ms. Baker expects that the proposed repeal will have the public benefits of eliminating an obsolete regulation and ensuring that TDI's rules conform to Insurance Code Chapters 2251 and 2301.

Ms. Baker expects that the proposed repeal will not increase the cost of compliance for insurers because the repeal does not create or impose any requirements and reduces regulatory burdens on insurers.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed repeal will not have an adverse economic effect on small, micro businesses, or on rural communities. There are no additional costs as a result of this proposal because it only repeals an existing regulation. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. This proposal repeals an existing regulation, eliminating requirements on insurers.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed repeal is in effect, the proposal:

- will not create or eliminate a government program;

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

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

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

- will not create a new regulation;

- will repeal an existing regulation;

- will decrease the number of individuals subject to the rule's applicability; and

- will positively affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and

that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on May 17, 2021. Send your comments to *ChiefClerk@tdi.texas.gov* or to the Office of the Chief Clerk, MC GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to *ChiefClerk@tdi.texas.gov* or to the Office of the Chief Clerk, MC GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on May 17, 2021. If a public hearing is held, TDI will consider comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes the repeal of 28 TAC §5.1201 under Insurance Code §§2251.003, 2301.003, and 36.001.

Insurance Code §2251.003, which provides that Insurance Code Chapter 2251, Subchapters B, C, and D, concerning Rate Standards, Rate Filings, and Prior Approval of Rates Under Certain Circumstances, applies to personal umbrella insurance and general liability insurance, which includes commercial umbrella insurance.

Insurance Code §2301.003, which provides that Insurance Code Chapter 2301, Subchapter A, concerning Policy Forms Generally, applies to personal umbrella insurance and general liability insurance, which includes commercial umbrella insurance.

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

CROSS-REFERENCE TO STATUTE. The proposed repeal of Division 2 and §5.1201 implements SB 14, 78th Legislature, 2003, and affects Insurance Code Chapters 2251 and 2301.

§5.1201. Regulation of Umbrella Liability Insurance.

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 April 5, 2021.

TRD-202101424
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: May 16, 2021
For further information, please call: (512) 676-6584

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.340

The Comptroller of Public Accounts proposes amendments to §3.340, concerning qualified research. The comptroller amends this section to provide guidance regarding the research and development sales tax exemption.

Throughout the section, the comptroller adds titles to statutory citations and makes minor revisions to improve readability.

The comptroller adds a new subsection (a)(1) to define the term "business component." The comptroller bases this term on IRC §41 (d)(2)(B) (Business component defined), with non-substantive changes. The comptroller renumbers subsequent paragraphs.

The comptroller amends the definition of "combined group" in renumbered subsection (a)(2) to remove unnecessary information and to add a cross-reference to §3.590 of this title (relating to Combined Reporting).

The comptroller adds new subsection (a)(4) to define the term "Four-Part Test." The comptroller derives this term from IRC, §41(d) (Qualified research defined) and the regulations applicable to that section.

The comptroller amends the definition of "Internal Revenue Code (IRC)" in renumbered paragraph (6) to explain that a regulation adopted after December 31, 2011 must require a taxpayer to apply that regulation to the 2011 federal income tax year to be included in this definition. The definition for IRC in Tax Code, §151.3182 (a)(2) (Certain Property Used in Research and Development Activities; Reporting of Estimates and Evaluation) incorporates by reference Tax Code, §171.651 (Definitions). The definition of IRC in Tax Code, §171.651 (1) states: "'Internal Revenue Code' means the Internal Revenue Code of 1986 in effect on December 31, 2011, excluding any changes made by federal law after that date, but including any regulations adopted under that code applicable to the tax year to which the provisions of the code in effect on that date applied."

The current version of Treasury Regulation, §1.41-4 (Qualified research for expenditures paid or incurred in taxable years ending on or after Dec. 31, 2003), adopted on November 3, 2016, is an example of a regulation that does not fully apply to the 2011 federal income tax year. With respect to its applicability, Treasury Regulation, §1.41-4 (e) provides: "Other than paragraph (c)(6) of this section, this section is applicable for taxable years ending on or after December 31, 2003. Subsection (c)(6) of this section is applicable for taxable years beginning on or after October 4, 2016. For any taxable year that both ends on or after January 20, 2015 and begins before October 4, 2016, the IRS will not challenge return positions consistent with all of paragraph (c)(6) of this section or all of paragraph (c)(6) of this section as contained in the Internal Revenue Bulletin (IRB) 2015-5 (see www.irs.gov/pub/irs-irbs/irb15-05.pdf). For taxable years ending before January 20, 2015, taxpayers may choose to follow either all of §1.41-4(c)(6) as contained in 26 CFR part 1 (revised as of April 1, 2003) and IRB 2001-5 (see www.irs.gov/pub/irs-irbs/irb01-05.pdf) or all of §1.41-4(c)(6) as contained in IRB 2002-4 (see www.irs.gov/pub/irs-irbs/irb02-04.pdf)." The first sentence quoted above shows that, other than paragraph (c)(6), the cur-

rent version of Treasury Regulation, §1.41-4 applies to the 2011 federal income tax year. With respect to paragraph (c)(6), the third sentence quoted above shows that the current language in Treasury Regulation §1.41-4 (c)(6) does not apply to the 2011 federal income tax year. The fourth sentence quoted above allows taxpayers to choose one of two proposed regulations described in the Internal Revenue Bulletins incorporated by reference. The proposed regulations referenced in those Internal Revenue Bulletins were finalized prior to the 2011 federal income tax year. Although the federal regulations allow taxpayers to choose whether they follow this prior IRS guidance, the options are not included in the term "Internal Revenue Code" because Treasury Regulation, §1.41-4 (e) does not require taxpayers to follow either of those options.

Another example of a regulation that does not apply to the 2011 federal income tax year is Treasury Regulation 1.174-2 (Definition of research and experimental expenditures), adopted July 21, 2014. With respect to its applicability, Treasury Regulation, §1.174-2 (d) provides: "The eighth and ninth sentences of §1.174-2(a)(1); §1.174-2(a)(2); §1.174-2(a)(4); §1.174-2(a)(5); §1.174-2(a)(11) Example 3 through Example 10; §1.174-2(b)(4); and §1.174-2(b)(5) apply to taxable years ending on or after July 21, 2014. Taxpayers may apply the provisions enumerated in the preceding sentence to taxable years for which the limitations for assessment of tax has not expired." While the federal statute of limitations for the assessment of tax for the 2011 federal income tax year had not expired at the time this regulation was adopted, the provisions enumerated in this applicability provision are not included in the term "Internal Revenue Code" because the regulation does not require taxpayers to apply those provisions to the 2011 federal income tax year.

The comptroller amends the definition of "qualified research" in renumbered paragraph (7) to explain that qualified research must be research conducted in Texas and that qualified research must satisfy the Four-Part Test. The comptroller also deletes subparagraphs (A) and (B). The information currently found in these subparagraphs is included in the expanded discussion in new subsections (c) and (d) regarding the Four-Part Test and the exclusions from qualified research.

The comptroller amends subsection (b) to add paragraphs (4) through (7). The comptroller adds paragraphs (4) and (5) to explain the requirement that property must be subject to depreciation in order to be eligible for the exemption. Paragraph (4) explains that the property qualifies for the exemption even if taxpayers do not actually depreciate the property. Paragraph (5) explains that property does not qualify for the exemption if it is not subject to depreciation in the form in which it was purchased, even if it is later used to create property that is subject to depreciation. Paragraph (5) contains an example illustrating this point. The comptroller adds paragraph (6) to explain that the taxpayer has the burden of proof to establish its entitlement to the exemption by clear and convincing evidence and that qualified research activities must be supported by contemporaneous business records. The comptroller adds paragraph (7) to explain that any determination by the IRS that a taxpayer is entitled to the federal research and development credit does not bind the comptroller when determining a taxpayer's eligibility for the exemption.

The comptroller adds new subsections (c) and (d) and reletters subsequent subsections.

In new subsection (c), the comptroller discusses the application of the Four-Part Test to explain the basic requirements for research activities to be qualified research. The comptroller bases this subsection primarily on IRC, §41(d) and Treasury Regulation, §1.41-4.

In paragraph (1), the comptroller describes the four individual components of the Four-Part Test: subparagraph (A) describes the Section 174 Test; subparagraph (B) describes the Discovering Technological Information Test; subparagraph (C) describes the Business Component Test; and subparagraph (D) describes the Process of Experimentation Test. In subparagraph (D), the comptroller provides several examples illustrating the Process of Experimentation Test.

In new paragraph (2), the comptroller explains that the Four-Part Test applies separately to each business component of the taxpayer.

In new paragraph (3), the comptroller explains that, if the whole business component does not meet the requirements of the Four-Part Test, the taxpayer may then shrink back the business component to the next most significant subset of elements of the business component. This process continues until the Four-Part Test is satisfied, or the most basic element of the product fails the Four-Part Test.

In new paragraph (4), the comptroller explains how the Four-Part Test applies to software development activities. The comptroller also identifies a list of software development activities that are likely to be qualified research and a list of software development activities that are unlikely to be qualified research. The explanation and lists in this paragraph are adapted from the Internal Revenue Service's Audit Guidelines on the Application of Process of Experimentation for all Software.

In new subsection (d), the comptroller lists activities that do not constitute qualified research. This list is based on IRC, §41(d)(4) and Treasury Regulation, §1.41-4(c) (Excluded activities). The discussion of the funded research exclusion is also based on Treasury Regulation, §1.41-4A(d) (Qualified research for taxable years beginning before January 1, 1986). This subsection contains examples for the research after commercial production exclusion and the adaptation of existing business components exclusion.

The comptroller amends relettered subsection (e). In paragraph (5), the comptroller replaces the word "will" with the word "may" to better reflect current comptroller practice concerning cancellation of a sales and use tax registration number before claiming a franchise tax research and development credit. In paragraph (6) the comptroller explains the effective date of cancellation for a registrant whose registration number is cancelled because of a failure to file an annual information report.

The comptroller amends relettered subsection (g), related to divergent use, to explain that divergent use applies to any item that the taxpayer uses for any purpose other than for use in qualified research, whether that use occurs before, during, or after the time when the taxpayer uses the item in qualified research.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: 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 a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by improving the clarity and implementation of the section. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant anticipated economic costs 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.*

The amendments are 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 amendments implement Tax Code, §151.3182.

§3.340. Qualified Research.

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

(1) Business component--A business component is any product, process, computer software, technique, formula, or invention, which is to be held for sale, lease, or license, or used by the taxpayer in a trade or business of the taxpayer.

(2) [~~(1)~~] Combined group--Taxable entities that are part of an affiliated group engaged in a unitary business and that are required to file a combined group report under Tax Code, §171.1014 (Combined Reporting; Affiliated Group Engaged in Unitary Business). For more information about combined groups, see §3.590 of this title (relating to Margin: Combined Reporting).

[~~(A) A combined group may not include a taxable entity that conducts business outside the United States if 80% or more of the taxable entity's property and payroll are assigned to locations outside the United States. If either the property factor or payroll factor is zero, the denominator is one. For example, if Corporation Z has no property, but does have payroll located entirely outside the United States, Corporation Z will not be included in the combined group. The combined group may not include a taxable entity that conducts business outside the United States and has no property or payroll if 80% or more of the taxable entity's gross receipts are assigned to locations outside the United States. See Tax Code, §171.1014.~~]

[~~(B) A combined group may not include an exempt entity.~~]

[~~(C) A combined group must include eligible entities even if those entities do not have nexus as described in §3.586 of this title (relating to Margin: Nexus).~~]

[~~(D) Eligible pass-through entities including partnerships, limited liability companies taxed as partnerships under federal law, limited liability companies that are disregarded under federal law and S corporations are included in a combined group.~~]

[~~(E) Passive entities are not included in the combined group; however, the pro rata share of net income from a passive entity shall be included in total revenue to the extent it was not generated by the margin of another taxable entity.~~]

(3) [~~(2)~~] Directly used in qualified research--Having an immediate use in qualified research activity, without an intervening or ancillary use.

(4) Four-Part Test--Four tests described in IRC, §41(d) (Qualified research defined) that determine whether research activities are qualified research. The four tests are the Section 174 Test, the Discovering Technological Information Test, the Business Component Test, and the Process of Experimentation Test.

(5) [~~(3)~~] Franchise tax research and development activities credit--A credit against franchise tax for qualified research activities that is allowed under Tax Code, Chapter 171, Subchapter M (Tax Credit for Certain Research and Development Activities).

(6) [~~(4)~~] Internal Revenue Code (IRC)--The Internal Revenue Code of 1986 in effect on December 31, 2011, excluding any changes made by federal law after that date, but including any regulations adopted under the code applicable to the tax year to which the provisions of the code in effect on that date applied. A regulation adopted after December 31, 2011 is only included in this term to the extent that the regulation requires a taxpayer to apply the regulation to the 2011 federal income tax year.

(7) [~~(5)~~] Qualified research--This term has the meaning given in IRC [~~Internal Revenue Code~~], §41(d), except that the research must be conducted in Texas. Qualified research activities must satisfy each part of the Four-Part Test.

[~~(A) Qualified research means research undertaken for discovering information that is technological in nature, and its application must be intended for use in developing a new or improved business component of the person undertaking the research. Substantially all of the activities of the research must be elements of a process of experimentation relating to a new or improved function, performance, reliability, or quality.~~]

[~~(B) Qualified research does not include the following activities:~~]

~~*(i)* research related to style, taste, cosmetic or seasonal design factors;~~]

~~*(ii)* research conducted after the beginning of commercial production of the business component;~~]

~~*(iii)* research adapting an existing product or process to a particular customer's need;~~]

~~*(iv)* duplication of an existing product or process;~~]

~~*(v)* surveys or studies;~~]

~~*(vi)* research relating to certain internal-use computer software;~~]

~~*(vii)* research conducted outside the United States, Puerto Rico, or a U.S. possession;~~]

~~*(viii)* research in the social sciences, arts, or humanities; or~~]

~~*(ix)* research funded by another person or governmental entity.~~]

(8) [~~(6)~~] Registrant--A taxpayer [~~person~~] who holds a Texas Qualified Research Registration Number issued by the comptroller.

(9) [~~(7)~~] Registration number--The Texas Qualified Research Registration Number issued by the comptroller to a taxpayer [~~person~~] who submits the Texas Registration for Qualified Research and Development Sales Tax Exemption form.

(10) [~~(8)~~] Taxable entity--This term has the meaning given by Tax Code, §171.0002 (Definition of Taxable Entity).

(b) Depreciable tangible personal property used in qualified research.

(1) Subject to paragraph (2) of this subsection, the sale, storage, or use of tangible personal property is exempt from Texas sales and use tax if the property:

(A) has a useful life that exceeds one year;

(B) is subject to depreciation under:

(i) generally accepted accounting principles; or

(ii) IRC [~~Internal Revenue Code~~], §167 (Depreciation) or §168 (Accelerated cost recovery system) [~~of 1986, in effect on December 31, 2011~~]; and

(C) is sold, leased, rented to, stored, or used [~~or stored~~]by a taxpayer [~~person~~] engaged in qualified research; and

(D) is directly used in qualified research. Depreciable tangible personal property is directly used in qualified research if it is used in the actual performance of activities that are part of the qualified research. For example, machinery, equipment, computers, software, tools, laboratory furniture such as desks, laboratory tables, stools, benches, and storage cabinets, and other tangible personal property used by personnel in the process of experimentation are directly used in qualified research. Tangible personal property is not directly used in qualified research if it is used in ancillary or support activities such as administration, maintenance, marketing, distribution, or transportation activities, or if it is used in activities excluded from qualified research. For example, machinery and equipment used by administrative, accounting, or clerical personnel are not directly used in qualified research.

(2) A taxpayer [~~person~~] may not claim the exemption if that taxpayer [~~person~~] will, as a taxable entity or as a member of a combined group, claim a franchise tax research and development activities credit on a franchise tax report based on the accounting period during which the depreciable tangible personal property used in qualified research would first be subject to Texas sales or use tax.

(3) A claim for a carryforward of an unused franchise tax research and development activities credit under Tax Code, §171.659 (Carryforward) does not affect a taxpayer's [~~person's~~] ability, as a taxable entity or as a member of a combined group, to claim the sales and use tax exemption provided by paragraph (1) of this subsection.

(4) Property satisfies paragraph (1)(B) of this subsection if it is subject to depreciation under generally accepted accounting principles, IRC, §167, or IRC, §168 even if the taxpayer does not actually depreciate that property.

(5) Property satisfies paragraph (1) of this subsection only if it is tangible personal property subject to depreciation at the time a taxpayer purchases it. For example, assume a taxpayer purchases tangible personal property that is not subject to depreciation. The taxpayer later incorporates that property into real property that is subject to depreciation. Although the real property with the incorporated tangible personal property is subject to depreciation, the tangible personal property, on its own, was never subject to depreciation. The tangible personal property does not satisfy paragraph (1) of this subsection because it was never subject to depreciation as tangible personal property.

(6) A taxpayer has the burden of establishing its entitlement to the exemption by clear and convincing evidence, including proof that the research activities meet the definition of qualified research and applying the shrink-back rule described in subsection (c)(3) of this section. All qualified research activities must be supported by contemporaneous business records.

(7) An Internal Revenue Service audit determination of eligibility for the federal research and development credit under IRC, §41 (Credit for increasing research activities), whether that determination is that the taxpayer qualifies or does not qualify for the federal research and development credit, is not binding on the comptroller's determination of eligibility for the exemption.

(c) Application of the Four-Part Test. Research activities must satisfy each part of the Four-Part Test, as described in paragraph (1) of this subsection, to be qualified research.

(1) Four-Part Test.

(A) Section 174 Test. Expenditures related to the research must be eligible to be treated as expenses under IRC, §174 (Research and experimental expenditures).

(i) Expenditures are eligible to be treated as expenses under IRC, §174, if the expenditures are incurred in connection with the taxpayer's trade or business and represent a research and development cost in the experimental or laboratory sense. Expenditures represent research and development costs in the experimental or laboratory sense if they are for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product. Uncertainty exists if the information available to the taxpayer does not establish the capability or method for developing or improving the product or the appropriate design of the product.

(ii) For the purposes of this test, the term "product" includes any pilot model, process, formula, invention, technique, patent, or similar property, and includes products to be used by the taxpayer in its trade or business as well as products to be held for sale, lease, or license.

(iii) Expenditures for the following are not eligible to be treated as expenses under IRC, §174:

(I) land;

(II) depreciable property;

(III) the ordinary testing or inspection of materials or products for quality control;

(IV) efficiency surveys;

(V) management studies;

(VI) consumer surveys;

(VII) advertising or promotions;

(VIII) the acquisition of another's patent, model, production, or process; or

(IX) research in connection with literary, historical, or similar projects.

(iv) Although expenditures for depreciable property are not eligible to be treated as expenditures under IRC, §174, those expenditures qualify for the purposes of the sales tax research and development exemption, provided that the research activities otherwise satisfy the Four-Part Test and are not excluded under subsection (d) of this section.

(B) Discovering Technological Information Test. The research must be undertaken for the purpose of discovering information that is technological in nature.

(i) Research is undertaken for the purpose of discovering technological information if it is intended to eliminate uncertainty concerning the development or improvement of a business component. Uncertainty exists if the information available to the taxpayer does not establish the capability or method for developing or improving the business component, or the appropriate design of the business component.

(ii) In order to satisfy the requirement that the research is technological in nature, the process of experimentation used to discover information must fundamentally rely on principles of the physical or biological sciences, engineering, or computer science. A taxpayer may employ existing technologies and may rely on existing principles of the physical or biological sciences, engineering, or computer science to satisfy this requirement.

(iii) A determination that research is undertaken for the purpose of discovering information that is technological in nature does not require that the taxpayer:

(I) seek to obtain information that exceeds, expands, or refines the common knowledge of skilled professionals in the particular field of science or engineering in which the taxpayer is performing the research; or

(II) succeed in developing a new or improved business component.

(C) Business Component Test. The application of the technological information for which the research is undertaken must be intended to be useful in the development of a new or improved business component of the taxpayer, which may include any product, process, computer software, technique, formula, or invention that is to be held for sale, lease, or license, or used by the taxpayer in a trade or business of the taxpayer.

(i) If a taxpayer provides a service to a customer, the service provided to that customer is not a business component because a service is not a product, process, computer software, technique, formula, or invention. However, a product, process, computer software, technique, formula, or invention used by a taxpayer to provide services to its customers may be a business component.

(ii) A design is not a business component because a design is not a product, process, computer software, technique, formula, or invention. While uncertainty as to the appropriate design of a business component is a qualifying uncertainty for the Section 174 Test and the Discovering Technological information test, the design itself is not a business component. For example, the design of a structure is not a business component, although the structure itself may be a business component. Similarly, a blueprint or other plan used to construct a structure that embodies a design is not a business component.

(D) Process of Experimentation Test. Substantially all of the research activities must constitute elements of a process of experimentation for a qualified purpose. A process of experimentation is undertaken for a qualified purpose if it relates to a new or improved function, performance, reliability, or quality of a business component. Any research relating to style, taste, cosmetic, or seasonal design factors does not satisfy the Process of Experimentation Test.

(i) A process of experimentation is a process designed to evaluate one or more alternatives to achieve a result where the capability or the method of achieving that result, or the appropriate design of that result, is uncertain as of the beginning of the taxpayer's research activities.

(ii) A process of experimentation must:

(I) be an evaluative process and generally should be capable of evaluating more than one alternative; and

(II) fundamentally rely on the principles of the physical or biological sciences, engineering, or computer science and involve:

(-a-) the identification of uncertainty concerning the development or improvement of a business component;

(-b-) the identification of one or more alternatives intended to eliminate that uncertainty; and

(-c-) the identification and the conduct of a process of evaluating the alternatives through, for example, modeling, simulation, or a systematic trial and error methodology.

(iii) A taxpayer may undertake a process of experimentation if there is no uncertainty concerning the taxpayer's capability or method of achieving the desired result so long as the appropriate design of the desired result is uncertain as of the beginning of the taxpayer's research activities. Uncertainty concerning the development or improvement of the business component (e.g., its appropriate design) does not establish that all activities undertaken to achieve that new or improved business component constitute a process of experimentation.

(iv) The substantially all requirement of this subparagraph is satisfied only if 80% or more of a taxpayer's research activities, measured on a cost or other consistently applied reasonable basis constitute elements of a process of experimentation that relates to a new or improved function, performance, reliability, or quality. The substantially all requirement is satisfied even if the remainder of a taxpayer's research activities with respect to the business component do not constitute elements of a process of experimentation that relates to a new or improved function, performance, reliability, or quality.

(v) Non-experimental methods, such as simple trial and error, brainstorming, or reverse engineering, are not considered a process of experimentation.

(vi) Factors considered in determining whether a trial and error methodology is experimental systematic trial and error or non-experimental simple trial and error include, but are not limited to:

(I) whether the person conducting the trial and error methodology stops testing alternatives once a single acceptable result is found or continues to find multiple acceptable results for comparison;

(II) whether all the results of the trial and error methodology are recorded for evaluation;

(III) whether there is a written procedure for conducting the trial and error methodology; and

(IV) whether there is a written procedure for evaluating the results of the trial and error methodology.

(vii) Examples.

(I) Example 1. A taxpayer is engaged in the business of developing and manufacturing widgets. The taxpayer wants to change the color of its blue widget to green. The taxpayer obtains several different shades of green paint from various suppliers. The taxpayer paints several sample widgets, and surveys its customers to determine which shade of green its customers prefer. The taxpayer's activities to change the color of its blue widget to green do not satisfy the Process of Experimentation Test because its activities are not undertaken for a qualified purpose. All of the taxpayer's research activities are related to style, taste, cosmetic, or seasonal design factors.

(II) Example 2. The taxpayer in Example 1 chooses one of the green paints. The taxpayer obtains samples of the green paint from a supplier and determines that it must modify its painting process to accommodate the green paint because the green paint has different characteristics from other paints it has used. The taxpayer obtains detailed data on the green paint from its paint supplier. The taxpayer also consults with the manufacturer of its paint spraying machines. The manufacturer informs the taxpayer that it must acquire new nozzles that operate with the green paint it wants to use because the current nozzles do not work with the green paint. The taxpayer tests the new nozzles, using the green paint, to ensure that they work as specified by the manufacturer of the paint spraying machines. The taxpayer's activities to modify its painting process are not qualified research. The taxpayer did not conduct a process of evaluating alternatives in order to eliminate uncertainty regarding the modification of its painting process. Rather, the manufacturer of the paint machines eliminated the taxpayer's uncertainty regarding the modification of its painting process. The taxpayer's activities to test the nozzles to determine if the nozzles work as specified by the manufacturer of the paint spraying machines are in the nature of routine or ordinary testing or inspection for quality control.

(III) Example 3. A taxpayer is engaged in the business of manufacturing food products and currently manufactures a large-shred version of a product. The taxpayer seeks to modify its current production line to permit it to manufacture both a large-shred version and a fine-shred version of one of its food products. A smaller, thinner shredding blade capable of producing a fine-shred version of the food product is not commercially available. Thus, the taxpayer must develop a new shredding blade that can be fitted onto its current production line. The taxpayer is uncertain concerning the design of the new shredding blade because the material used in its existing blade breaks when machined into smaller, thinner blades. The taxpayer engages in a systematic trial and error process of analyzing various blade designs and materials to determine whether the new shredding blade must be constructed of a different material from that of its existing shredding blade and, if so, what material will best meet its functional requirements. The taxpayer's activities to modify its current production line by developing the new shredding blade satisfy the Process of Experimentation Test. Substantially all of the taxpayer's activities constitute elements of a process of experimentation because it evaluated alternatives to achieve a result where the method of achieving that result, and the appropriate design of that result, were uncertain as of the beginning of the taxpayer's research activities. The taxpayer identified uncertainties related to the development of a business component, and identified alternatives intended to eliminate these uncertainties. Furthermore, the taxpayer's process of evaluating identified alternatives was technological in nature and was undertaken to eliminate the uncertainties.

(IV) Example 4. A taxpayer is in the business of designing, developing and manufacturing automobiles. In response to government-mandated fuel economy requirements, the taxpayer seeks to update its current model vehicle and undertakes to improve aerodynamics by lowering the hood of its current model vehicle. The taxpayer determines, however, that lowering the hood changes the air flow under the hood, which changes the rate at which air enters the engine through the air intake system, which reduces the functionality of the cooling system. The taxpayer's engineers are uncertain how to design a lower hood to obtain the increased fuel economy, while maintaining the necessary air flow under the hood. The taxpayer designs, models, simulates, tests, refines, and re-tests several alternative designs for the hood and associated proposed modifications to both the air intake system and cooling system. This process enables the taxpayer to eliminate the uncertainties related to the integrated design of the hood, air intake system, and cooling system. Such activities constitute 85% of its total activities to update its current model vehicle. The taxpayer then engages in additional activities that do not involve a process of evaluating alternatives in order to eliminate uncertainties. The additional activities constitute only 15% of the taxpayer's total activities to update its current model vehicle. In this case substantially all of the taxpayer's activities constitute elements of a process of experimentation because it evaluated alternatives to achieve a result where the method of achieving that result, and the appropriate design of that result, were uncertain as of the beginning of its research activities. The taxpayer identified uncertainties related to the improvement of a business component and identified alternatives intended to eliminate these uncertainties. Furthermore, the taxpayer's process of evaluating the identified alternatives was technological in nature and was undertaken to eliminate the uncertainties. Because 85% of the taxpayer's activities to update its current model vehicle constitute elements of a process of experimentation that relates to a new or improved function, performance, reliability, or quality, all of its activities satisfy the Process of Experimentation Test.

(V) Example 5. A taxpayer is in the business of providing building and construction services, including the construction of warehouses, strip malls, office buildings, and other commercial structures. The taxpayer is engaged to construct a structure in a part of Texas where foundation problems are common. The taxpayer's engineers were uncertain how to design the structure to ensure stability of the structure's foundation because the taxpayer had never designed a structure in a similar location. The taxpayer's engineers used their professional experience and various building codes to determine how to design the foundation based on the conditions at the construction site. The engineers chose to use piles in the foundation. The taxpayer constructed a test pile on site to confirm whether this would work in the conditions present on the construction site. This test pile would become part of the foundation of the structure regardless of whether the engineers had to redesign the additional piles required for the foundation. The taxpayer's activities in using professional experience and business codes to design the foundation did not meet the Process of Experimentation Test because the activities did not resolve technological uncertainties through an experimental process. Constructing the test pile also did not meet the Process of Experimentation Test because it was not an evaluative process.

(VI) Example 6. A taxpayer is in the business of providing building and construction services, including the construction of warehouses, strip malls, office buildings, and other commercial structures. For one of its projects to construct an office building, the taxpayer was uncertain how to design the layout of the electrical systems. The taxpayer's employees held on-site meetings to discuss different options, such as running the wire under the floor or through the ceiling, but did not actually experiment by installing wire in different locations. The taxpayer did use computer-aided simulation and modeling to produce the final electrical system layout, but, in this case, such use was not an experimental process. The taxpayer's activities did not satisfy the Process of Experimentation Test because it did not conduct an experimental process of evaluating alternatives to eliminate a technological uncertainty.

(VII) Example 7. A taxpayer is an oil and gas operator that recently acquired rights to drill in an area in which it had not previously operated. The taxpayer decided to use horizontal drilling in this area, but it had never drilled a horizontal well and was uncertain how to successfully execute the horizontal drilling. At the time the taxpayer began horizontal drilling, the technology to drill horizontal wells was established. The taxpayer selected technology from existing commercially available options to use in its horizontal drilling program. The taxpayer's activities did not satisfy the Process of Experimentation Test because evaluating commercially available options does not constitute a process of experimentation.

(VIII) Example 8. A taxpayer is an oil and gas operator that recently acquired rights to drill in an area in which it had not previously operated. The taxpayer decided to use horizontal drilling in this area. The taxpayer had drilled a horizontal well before in a different formation and at different depths. However, it had never drilled a horizontal well in this formation or at the required depths and was uncertain how to successfully execute the horizontal drilling. The taxpayer utilized its existing technology to perform its horizontal drilling operations in this area and the existing technology was successful. The taxpayer's activities did not satisfy the Process of Experimentation Test because the taxpayer did not evaluate alternative any drilling methods.

(IX) Example 9. A taxpayer sought to discover novel cancer immunotherapies. The taxpayer was uncertain as to the appropriate design of the proteins to be used as a drug candidate. The taxpayer identified several alternative protein constructs and used a process to test them. The taxpayer's process involved testing the constructs using in vitro functional assays and binding assays, and either modifying the designs or discarding them and repeating the previous steps. The taxpayer took the resulting products from the in vitro testing and tested the drug candidate in living organisms. This process evaluated the various alternatives identified by the taxpayer. The taxpayer's activities satisfied the Process of Experimentation Test.

(2) Application of the Four-Part Test to business components. The Four-Part Test is applied separately to each business component of the taxpayer. Any plant process, machinery, or technique for commercial production of a business component is treated as a separate business component from the business component being produced.

(3) Shrink-back rule. The Four-Part Test is first applied at the level of the discrete business component used by the taxpayer in a trade or business of the taxpayer. If the requirements of the Four-Part Test are not met at that level, then they are applied at the next most significant subset of elements of the business component. This shrinking back of the product continues until either a subset of elements of the product that satisfies the requirements of the Four-Part Test is reached, or the most basic element of the product is reached and such element fails to satisfy any part of the Four-Part Test.

(4) Software development as qualified research. In determining if software development activities constitute qualified research, the comptroller shall consider the facts and circumstances of each activity.

(A) Application of Four-Part Test to software development activities.

(i) A taxpayer must prove that a software development activity is qualified research and meets all the requirements of the Four-Part Test under paragraph (1) of this subsection, even if the activity is likely to qualify as described in subparagraph (B) of this paragraph.

(ii) A taxpayer may prove that a software development activity described as unlikely to qualify in subparagraph (C) of this paragraph, is qualified research by providing evidence that the activity meets all the requirements of the Four-Part Test under paragraph (1) of this subsection.

(B) Software development activities likely to qualify. Types of activities likely to qualify include, but are not limited to:

(i) developing the initial release of an application software product that includes new constructs, such as new architectures, new algorithms, or new database management techniques;

(ii) developing system software, such as operating systems and compilers;

(iii) developing specialized technologies, such as image processing, artificial intelligence, or speech recognition; and

(iv) developing software as part of a hardware product where the software interacts directly with that hardware in order to make the hardware/software package function as a unit.

(C) Software development activities unlikely to qualify. Types of activities unlikely to qualify include, but are not limited to:

(i) maintaining existing software applications or products;

(ii) configuring purchased software applications;

(iii) reverse engineering of existing applications;

(iv) performing studies, or similar activities, to select vendor products;

(v) detecting flaws and bugs directed toward the verification and validation that the software was programmed as intended and works correctly;

(vi) modifying an existing software business component to make use of new or existing standards or devices, or to be compliant with another vendor's product or platform;

(vii) developing a business component that is substantially similar in technology, functionality, and features to the capabilities already in existence at other companies;

(viii) upgrading to newer versions of hardware or software or installing vendor-fix releases;

(ix) re-hosting or porting an application to a new hardware such as from mainframe to PC, or software platform, such as Windows to UNIX, or rewriting an existing application in a new language, such as rewriting a COBOL mainframe application in C++;

(x) writing hardware device drivers to support new hardware, such as disks, scanners, printers, or modems;

(xi) performing data quality, data cleansing, and data consistency activities, such as designing and implementing software to validate data fields, clean data fields, or make the data fields consistent across databases and applications;

(xii) bundling existing individual software products into product suites, such as combining existing word processor, spreadsheet, and slide presentation software applications into a single suite;

(xiii) expanding product lines by purchasing other products;

(xiv) developing interfaces between different software applications;

(xv) developing vendor product extensions;

(xvi) designing graphic user interfaces;

(xvii) developing functional enhancements to existing software applications/products;

(xviii) developing software as an embedded application, such as in cell phones, automobiles, and airplanes;

(xix) developing software utility programs, such as debuggers, backup systems, performance analyzers, and data recovery;

(xx) changing from a product based on one technology to a product based on a different or newer technology; and

(xxi) adapting and commercializing technology developed by a consortium or open software group.

(d) Excluded research activities. Qualified research does not include the activities described in this subsection.

(1) Research after commercial production. Any research conducted after the beginning of commercial production of the business component.

(A) Activities are conducted after the beginning of commercial production of a business component if such activities are conducted after the component is developed to the point where it is ready for commercial sale or use or meets the basic functional and economic requirements of the taxpayer for the component's sale or use.

(B) The following activities are deemed to occur after the beginning of commercial production of a business component:

(i) preproduction planning for a finished business component;

(ii) tooling-up for production;

(iii) trial production runs;

(iv) troubleshooting involving detecting faults in production equipment or processes;

(v) accumulating data relating to production processes;

(vi) debugging flaws in a business component; and

(vii) any activities that involve the use of an item for which the taxpayer claimed the manufacturing exemption under Tax Code, §151.318.

(C) In cases involving development of both a product and a manufacturing or other commercial production process for the product, the research after commercial production exclusion applies separately for the activities relating to the development of the product and the activities relating to the development of the process. For example, even after a product meets the taxpayer's basic functional and economic requirements, activities relating to the development of the manufacturing process may still constitute qualified research, provided that the development of the process itself separately satisfies the requirements of this section, and the activities are conducted before the process meets the taxpayer's basic functional and economic requirements or is ready for commercial use.

(D) Clinical testing of a pharmaceutical product prior to its commercial production in the United States is not treated as occurring after the beginning of commercial production even if the product is commercially available in other countries. Additional clinical testing of a pharmaceutical product after a product has been approved for a specific therapeutic use by the Food and Drug Administration and is ready for commercial production and sale is not treated as occurring after the beginning of commercial production if such clinical testing is undertaken to establish new functional uses, characteristics, indications, combinations, dosages, or delivery forms for the product. A functional use, characteristic, indication, combination, dosage, or delivery form shall be considered new only if such functional use, characteristic, indication, combination, dosage, or delivery form must be approved by the Food and Drug Administration.

(E) Examples.

(i) Example 1. A taxpayer is a tire manufacturer and develops a new material to use in its tires. The taxpayer conducts research to determine the changes that will be necessary for it to modify its existing manufacturing processes to manufacture the new tire. The taxpayer determines that the new tire material retains heat for a longer period of time than the materials it currently uses for tires, and, as a result, the new tire material adheres to the manufacturing equipment during tread cooling. The taxpayer evaluates several alternatives for processing the treads at cooler temperatures to address this problem, including a new type of belt for its manufacturing equipment to be used in tread cooling. Such a belt is not commercially available. Because the taxpayer is uncertain of the belt design, it develops and conducts sophisticated engineering tests on several alternative designs for a new type of belt to be used in tread cooling until it successfully achieves a design that meets its requirements. The taxpayer then manufactures a set of belts for its production equipment, installs the belts, and tests the belts to make sure they were manufactured correctly. The taxpayer's research with respect to the design of the new belts to be used in its manufacturing of the new tire may be qualified research under the Four-Part Test. However, the taxpayer's expenses to implement the new belts, including the costs to manufacture, install, and test the belts were incurred after the belts met the taxpayer's functional and economic requirements and are excluded as research after commercial production.

(ii) Example 2. For several years, a taxpayer has manufactured and sold a particular kind of widget. The taxpayer initiates a new research project to develop a new or improved widget. The taxpayer's activities to develop a new or improved widget are not excluded from the definition of qualified research under this paragraph. The taxpayer's activities relating to the development of a new or improved widget constitute a new research project to develop a new business component and are not considered activities conducted after the beginning of commercial production.

(iii) Example 3. For the purposes of this example, assume that the taxpayer's development of its products satisfies the Four-Part Test described by subsection (c) of this section and is not otherwise excluded under this subsection. A taxpayer is a manufacturer of integrated circuits for use in specific applications. The taxpayer designs various integrated circuit devices and assembles various product configurations for testing. After an internal process of testing, the taxpayer delivers a sample quantity of the integrated circuit to a potential customer for further testing. At the time when the samples are delivered to the taxpayer's potential customer, the potential customer has not agreed to purchase any integrated circuits from the taxpayer. This process of testing by both the taxpayer and its potential customer continues until an acceptable design is achieved. At that point, the taxpayer and the potential customer enter an agreement for the delivery of an order of the integrated circuits. In some cases, no acceptable design is achieved, and no agreement is reached with the potential customer. Research activities occurring prior to an agreement are not considered activities conducted after the beginning of commercial production because the integrated circuits were not yet ready for commercial use. Any research that occurs after an agreement is reached are excluded as activities conducted after the beginning of commercial production because the integrated circuits were ready for commercial use once the design was accepted by the potential customer.

(2) Adaptation of existing business components. Activities relating to adapting an existing business component to a particular customer's requirement or need. This exclusion does not apply merely because a business component is intended for a specific customer. For example:

(A) Example 1. A taxpayer is a computer software development firm and owns a general ledger accounting software core program that it markets and licenses to customers. The taxpayer incurs expenditures in adapting the core software program to the requirements of one of its customers. Because the taxpayer's activities represent ac-

tivities to adapt an existing software program to a particular customer's requirement or need, its activities are excluded from the definition of qualified research under this paragraph.

(B) Example 2. Assume that the customer from Example 1 pays the taxpayer to adapt the core software program to the customer's requirements. Because the taxpayer's activities are excluded from the definition of qualified research, the customer's payments to the taxpayer are not for qualified research and are not considered to be contract research expenses.

(C) Example 3. Assume that the customer from Example 1 uses its own employees to adapt the core software program to its requirements. Because the customer's employees' activities to adapt the core software program to its requirements are excluded from the definition of qualified research, the wages the customer paid to its employees do not constitute in-house research expenses.

(D) Example 4. A taxpayer manufactures and sells rail cars. Because rail cars have numerous specifications related to performance, reliability and quality, rail car designs are subject to extensive, complex testing in the scientific or laboratory sense. A customer orders passenger rail cars from the taxpayer. The customer's rail car requirements differ from those of the taxpayer's other existing customers only in that the customer wants fewer seats in its passenger cars and a higher quality seating material and carpet that are commercially available. The taxpayer manufactures rail cars meeting the customer's requirements. The rail car sold to the customer was not a new business component, but merely an adaptation of an existing business component that did not require a process of experimentation. Thus, the taxpayer's activities to manufacture rail cars for the customer are excluded from the definition of qualified research because the taxpayer's activities represent activities to adapt an existing business component to a particular customer's requirement or need.

(E) Example 5. A taxpayer is a manufacturer and undertakes to create a manufacturing process for a new valve design. The taxpayer determines that it requires a specialized type of robotic equipment to use in the manufacturing process for its new valves. Such robotic equipment is not commercially available. Therefore, the taxpayer purchases existing robotic equipment for the purpose of modifying it to meet its needs. The taxpayer's engineers identify uncertainty that is technological in nature concerning how to modify the existing robotic equipment to meet its needs. The taxpayer's engineers develop several alternative designs, conduct experiments using modeling and simulation in modifying the robotic equipment, and conduct extensive scientific and laboratory testing of design alternatives. As a result of this process, the taxpayer's engineers develop a design for the robotic equipment that meets its needs. The taxpayer constructs and installs the modified robotic equipment on its manufacturing process. The taxpayer's research activities to determine how to modify the robotic equipment it purchased for its manufacturing process are not considered an adaptation of an existing business component.

(F) Example 6. A taxpayer is an oil and gas operator and has been engaged in horizontal drilling for the past ten years. Recently, the taxpayer was hired by a customer to drill in a formation. The drilling objectives included targeting an interval within that formation for horizontal drilling. The taxpayer was uncertain about the successful execution of the horizontal drilling because it had not previously drilled a horizontal well in that formation. The taxpayer was also uncertain about the economic results from the targeted interval. The taxpayer drilled several horizontal wells before its customer was satisfied with the economic results. The taxpayer modified its existing horizontal drilling program based on these results. The taxpayer's activities to identify a horizontal drilling process are excluded from the definition of qualified research because the activities consisted of adapting an existing business component (its existing horizontal drilling process) to meet a particular customer's need.

(G) Example 7. For the purposes of this example, assume that the taxpayer's development of its products satisfies the Four-Part Test described by subsection (c) of this section and is not otherwise excluded under this subsection. A taxpayer is a manufacturer of rigid plastic containers. The taxpayer contracts with major food and beverage manufacturers to provide suitable bottle and packaging designs. The products designed by the taxpayer may be for repeat customers and the sizes and types of bottle may be similar to previous products. The development of each new product, and the production process necessary to produce the products at sufficient production volume, starts from new concept drawings developed by engineers. The taxpayer uses a qualifying process of experimentation to evaluate alternative concepts for the product and production processes. The taxpayer's activities related to both the product and the production process are not excluded from the definition of qualified research as an adaptation of an existing business component.

(3) Duplication of existing business component. Any research related to the reproduction of an existing business component, in whole or in part, from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component. This exclusion does not apply merely because the taxpayer examines an existing business component in the course of developing its own business component.

(4) Surveys, studies, etc. Any efficiency survey; activity relating to management function or technique; market research, testing or development (including advertising or promotions); routine data collection; or routine or ordinary testing or inspection for quality control.

(5) Computer software. Any research activities with respect to internal use software.

(A) For the purposes of this paragraph, internal use software is computer software developed by, or for the benefit of, the taxpayer primarily for internal use by the taxpayer. A taxpayer uses software internally if the software was developed for use in the operation of the business. Computer software that is developed to be commercially sold, leased, licensed, or otherwise marketed for separately stated consideration to unrelated third parties is not internal use software.

(B) Software developed by a taxpayer primarily for internal use by an entity that is part of an affiliated group to which the taxpayer also belongs shall be considered internal use software for purposes of this paragraph.

(C) This exclusion does not apply to software used in:

(i) an activity that constitutes qualified research, or

(ii) a production process that meets the requirements of the Four-Part Test.

(D) The determination as to whether software is internal use software depends on the facts and circumstances existing at the beginning of the development of the software.

(6) Social sciences, etc. Any research in the social sciences, arts, or humanities.

(7) Funded research. Any research funded by any grant, contract, or otherwise by another person or governmental entity.

(A) Research is considered funded if:

(i) the taxpayer performing the research for another person retains no substantial rights to the results of the research; or

(ii) the payments to the researcher are not contingent upon the success of the research.

(B) For the purposes of determining whether a taxpayer retains substantial rights to the results of the research:

(i) Incidental benefits to the researcher from the performance of the research do not constitute substantial rights. For example, increased experience in a field of research is not considered substantial rights.

(ii) A taxpayer does not retain substantial rights in the research it performs if the taxpayer must pay for the right to use the results of the research.

(C) If a taxpayer performing research does not retain substantial rights to the results of the research, the research is considered funded regardless of whether the payments to the researcher are contingent upon the success of the research. In this case, all research activities are considered funded even if the researcher has expenses that exceed the amount received by the researcher for the research.

(D) If a taxpayer performing research does retain substantial rights to the results of the research and the research is considered funded under subparagraph (A)(ii) of this paragraph, the research is only funded to the extent of the payments and fair market value of any property that the taxpayer becomes entitled to by performing the research. If the expenses related to the research exceed the amount the researcher is entitled to receive, the research is not considered funded with respect to the excess expenses. For example, a taxpayer performs research for another person. Based on the contract, the research activities are considered funded under subparagraph (A)(ii) of this paragraph because payments to the researcher are not contingent on the success of the research. The taxpayer retains substantial rights to the results of the research. The taxpayer is entitled to $100,000 under the contract but spent $120,000 on the research activities. In this case, the research is considered funded with respect to $100,000 and is not considered funded with respect to $20,000.

(E) A taxpayer performing research for another person must identify any other person paying for the research activities and any person with substantial rights to the results of the research.

(F) All agreements, not only research contracts, entered into between the taxpayer performing the research and the party funding the research shall be considered in determining the extent to which the research is funded.

(G) The provisions of this paragraph shall be applied separately to each research project undertaken by the taxpayer.

(e) [~~(c)~~] Texas Qualified Research and Development Exemption Registration. In order to claim an exemption under this section, a taxpayer [~~person~~] must first register with the comptroller and obtain a registration number.

(1) Registration procedure. To obtain a registration number, a taxpayer [~~person~~] must complete Form AP-234, Texas Registration for Qualified Research and Development Sales Tax Exemption, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form.

(A) The taxpayer [~~person~~] requesting the registration number must certify that it will not, as a taxable entity or as a member of a combined group, claim a franchise tax research and development activities credit on a franchise tax report based on an accounting period during which it claims an exemption under subsection (b) of this section.

(B) The taxpayer [~~person~~] requesting the registration number must provide all data and information required by the comptroller to administer the exemption and comply with Tax Code, §151.3182(c) (Certain Property Used in Research and Development Activities; Reporting of Estimates and Evaluation).

(2) Retroactive registration. A taxpayer [~~person~~] may request that a registration number be given retroactive effect.

(A) A taxpayer [~~person~~] may request that a registration number have retroactive effect by following the procedures [~~submitting a registration as~~] required under paragraph (1) of this subsection and by completing an annual information report, described in paragraph (3) of this subsection, for each prior year for which the registration number is to be effective.

(B) The registration number may be made retroactive to the later of January 1, 2014, or a date requested by a registrant that is no more than four years prior to the date the registration is received, if the date requested is not within an accounting period during which the registrant, as a taxable entity or as a member of a combined group, claimed the franchise tax research and development activities credit.

(C) A registrant who is issued a retroactive registration number may file a claim for refund of Texas sales and use tax paid on purchases made on or after the later of January 1, 2014, or the effective date of the registration number, that qualify for exemption under subsection (b) of this section, in accordance with the requirements of §3.325 of this title (relating to Refunds and Payments Under Protest).

(D) A claim for a carryforward of an unused franchise tax research and development activities credit under Tax Code, §171.659 does not affect a taxpayer's [~~person's~~] ability, as a taxable entity or as a member of a combined group, to request a retroactive registration.

(3) Annual information report. A registrant must submit an annual information report for each calendar year its registration number is effective, irrespective of the date on which the original registration occurred.

(A) The registrant must provide all data and information required by the comptroller to administer the exemption and comply with Tax Code, §151.3182(c).

(B) The annual information report must be submitted electronically unless the comptroller issues a waiver. A registrant who cannot comply with this requirement due to hardship, impracticality, or other valid reason must submit a written request to the comptroller for a waiver of the requirement.

(C) The due date for the annual information report for the preceding calendar year is March 31. If March 31 falls on a Saturday, Sunday, or a legal holiday, the due date is the next business day.

(i) An annual information report filed electronically must be completed and submitted by 11:59 p.m. central time on the due date to be considered timely.

(ii) Reports submitted on paper must be postmarked on or before the due date to be considered timely.

(D) A registrant who fails to timely file an annual information report for its registration number will be given written notice of the failure to file. If an annual information report is not submitted within 60 days of the date of the notice of failure to file, the registration number will be cancelled by the comptroller in accordance with paragraph (5) of this subsection.

(4) Direct payment permit holders. A direct payment permit holder must obtain a registration number as required by paragraph (1) of this subsection in order to claim an exemption under this section. A direct payment permit holder with a registration number must file an annual information report for each year the number is effective as required by paragraph (3) of this subsection.

(5) Cancellation of registration number by the comptroller. The comptroller will cancel the registration number of a registrant who fails to comply with the provisions of this section. For example, the comptroller may [~~will~~] cancel the registration number of a registrant who fails to file an annual information report or who claims the franchise tax research and development activities credit without first cancelling its registration number, as required by paragraph (8) of this subsection. The comptroller shall give written notice of the cancellation to the registrant. The notice may be personally served on the registrant or sent by regular mail to the registrant's address as shown in the comptroller's records. The former registrant may not claim an exemption under this section during the period when the registration number is cancelled. A former registrant that purchases an item under a cancelled registration number may be subject to a criminal penalty under Tax Code, §151.707 (Resale or Exemption Certificate; Criminal Penalty) and §3.287(d)(3) of this title (relating to Exemption Certificates).

(6) Effective date of cancellation. A registrant whose registration number is cancelled by the comptroller is responsible for remitting Texas sales and use tax, and penalty and interest from the date of purchase, on any items purchased tax-free pursuant to Tax Code, §151.3182 on or after the effective date of cancellation. In the case of a registrant whose registration number is cancelled because of a failure to file an annual information report, the effective date of the cancellation is December 31 of the last year for which the registrant filed an annual information report. In the case of a registrant whose registration number is cancelled because the registrant, as a taxable entity or as a member of a combined group, claimed the franchise tax research and development activities credit, the effective date of cancellation is the beginning date of the accounting period covered by the franchise tax report on which the credit was claimed.

(7) Reinstatement following cancellation. A former registrant who has had its registration number cancelled by the comptroller may submit a request in writing to have the registration number reinstated.

(A) A former registrant whose registration number has been cancelled may request reinstatement of the number be given retroactive effect. The registrant must file an annual information report for each prior year for which the registration number is to be effective.

(B) A registration number will not be reinstated for periods during which the former registrant is not eligible for the exemption under this section.

(C) Before the comptroller will reinstate a registration number, the former registrant must remit any Texas sales and use taxes, as well as applicable penalties and interest from the date of purchase, on all purchases made tax-free under this section during periods when the registrant was not eligible for the exemption under this section.

(8) Cancellation of registration number by registrant. A registrant who has received a registration number and subsequently chooses to claim the franchise tax research and development activities credit must cancel the registration number. The registrant is responsible for remitting Texas sales and use tax, and penalty and interest from the date of purchase, on any items purchased tax-free under this section during any accounting periods covered by a franchise tax report on which the credit is claimed.

(f) [~~(d)~~] Texas Qualified Research Sales and Use Tax Exemption Certificate. Beginning January 1, 2014, a retailer may accept a valid and complete Form 01-931, Texas Qualified Research Sales and Use Tax Exemption Certificate or any form promulgated by the comptroller or that succeeds such form, in lieu of Texas sales and use tax on the sale of depreciable tangible personal property that qualifies for exemption under subsection (b) of this section. To be valid and complete, a Texas Qualified Research Sales and Use Tax Exemption Certificate must bear the registration number issued to the registrant by the comptroller and must be signed by the registrant or the registrant's authorized agent. Texas Qualified Research Sales and Use Tax Exemption Certificates are subject to the requirements of §3.287(d) of this title. A retailer must maintain a copy of the Texas Qualified Research Sales and Use Tax Exemption Certificate accepted in lieu of tax on a sale and all records supporting that transaction. Refer to §3.281 of this title (relating to Records Required; Information Required).

(g) [~~(e)~~] Divergent use. When a registrant uses an item purchased under a valid Texas Qualified Research Sales [~~Sale~~] and Use Tax Exemption Certificate in a taxable manner, the registrant is liable for payment of Texas sales and use tax, plus penalty and interest as applicable, based on the fair market rental value of the tangible personal property for the period of time used in the taxable manner. This subsection applies to an item that is used for any purpose other than for use in qualified research, whether that use occurs before, during, or after the time when the item is used in qualified research. Refer to Tax Code, §151.155 (Exemption Certificate).

(h) [~~(f)~~] Refund of Texas sales and use tax paid on depreciable tangible personal property used in qualified research. A registrant with a valid registration number may file a claim for refund of Texas sales and use tax paid on purchases made on or after the later of January 1, 2014, or the effective date of the registration number, that qualify for exemption under subsection (b) of this section in accordance with the requirements of §3.325 of this title.

(i) [~~(g)~~] Expiration. The sales and use tax exemption for depreciable tangible personal property used in qualified research expires on December 31, 2026.

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 April 5, 2021.

TRD-202101421
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: May 16, 2021
For further information, please call: (512) 475-0387

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SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.599

The Comptroller of Public Accounts proposes amendments to §3.599, concerning margin: research and development activities credit. The comptroller amends this section to provide guidance regarding the franchise tax research and development activities credit.

Throughout the section, the comptroller adds titles to statutory citations and makes minor revisions to improve readability.

The comptroller amends subsection (b)(1) by deleting the term "affiliated group" and adding a new term, "business component." The comptroller deletes the term "affiliated group" because the definition of combined group refers to Tax Code, §171.1014 (Combined Reporting; Affiliated Group Engaged in Unitary Business), which provides sufficient guidance. The comptroller defines the term, "business component," and bases this term on Internal Revenue Code (IRC), §41(d)(2)(B) (Business component defined), with non-substantive changes.

The comptroller adds new paragraph (4) to define the term "Four-Part Test" and renumbers subsequent paragraphs. The comptroller derives this term from IRC, §41(d) (Qualified research defined) and the regulations applicable to that section.

The comptroller amends the definition of "Internal Revenue Code (IRC)" in renumbered paragraph (5) to explain that a regulation adopted after December 31, 2011 must require a taxable entity to apply that regulation to the 2011 federal income tax year to be included in this definition. The definition of IRC in Tax Code, §171.651 (1) states: "'Internal Revenue Code' means the Internal Revenue Code of 1986 in effect on December 31, 2011, excluding any changes made by federal law after that date, but including any regulations adopted under that code applicable to the tax year to which the provisions of the code in effect on that date applied."

The current version of Treasury Regulation, §1.41-4 (Qualified research for expenditures paid or incurred in taxable years ending on or after Dec. 31, 2003), adopted on November 3, 2016, is an example of a regulation that does not fully apply to the 2011 federal income tax year. With respect to its applicability, Treasury Regulation, §1.41-4 (e) provides: "Other than subsection (c)(6) of this section, this section is applicable for taxable years ending on or after December 31, 2003. Paragraph(c)(6) of this section is applicable for taxable years beginning on or after October 4, 2016. For any taxable year that both ends on or after January 20, 2015 and begins before October 4, 2016, the IRS will not challenge return positions consistent with all of subsection (c)(6) of this section or all of subsection (c)(6) of this section as contained in the Internal Revenue Bulletin (IRB) 2015-5 (see www.irs.gov/pub/irs-irbs/irb15-05.pdf). For taxable years ending before January 20, 2015, taxpayers may choose to follow either all of §1.41-4(c)(6) as contained in 26 CFR part 1 (revised as of April 1, 2003) and IRB 2001-5 (see www.irs.gov/pub/irs-irbs/irb01-05.pdf) or all of §1.41-4(c)(6) as contained in IRB 2002-4 (see www.irs.gov/pub/irs-irbs/irb02-04.pdf)." The first sentence quoted above shows that, other than paragraph (c)(6), the current version of Treasury Regulation, §1.41-4 applies to the 2011 federal income tax year. With respect to subsection (c)(6), the third sentence quoted above shows that the current language in Treasury Regulation §1.41-4 (c)(6) does not apply to the 2011 federal income tax year. The fourth sentence quoted above allows taxable entities to choose one of two proposed regulations described in the Internal Revenue Bulletins incorporated by reference. The proposed regulations referenced in those Internal Revenue Bulletins were finalized prior to the 2011 federal income tax year. Although the federal regulations allow taxable entities to choose whether they follow this prior IRS guidance, the options are not included in the term "Internal Revenue Code" because Treasury Regulation, §1.41-4 (e) does not require taxable entities to follow either of those options.

Another example of a regulation that does not apply to the 2011 federal income tax year is Treasury Regulation 1.174-2 (Definition of research and experimental expenditures), adopted July 21, 2014. With respect to its applicability, Treasury Regulation, §1.174-2 (d) provides: "The eighth and ninth sentences of §1.174-2(a)(1); §1.174-2(a)(2); §1.174-2(a)(4); §1.174-2(a)(5); §1.174-2(a)(11) Example 3 through Example 10; §1.174-2(b)(4); and §1.174-2(b)(5) apply to taxable years ending on or after July 21, 2014. Taxpayers may apply the provisions enumerated in the preceding sentence to taxable years for which the limitations for assessment of tax has not expired." While the federal statute of limitations for the assessment of tax for the 2011 federal income tax year had not expired at the time this regulation was adopted, the provisions enumerated in this applicability provision are not included in the term "Internal Revenue Code" because the regulation does not require taxable entities to apply those provisions to the 2011 federal income tax year.

The comptroller amends the definition of "qualified research" in renumbered paragraph (7) to explain that qualified research must satisfy the Four-Part Test.

The comptroller amends the definition of "qualified research expense (QRE)" in renumbered paragraph (8) based on IRC, §41(b) (Qualified research expenses) and Treasury Regulation, §1.41-2 (Qualified research expenses). The amended definition of QREs does not limit the applicability of any provisions of IRC, §41(b) or Treasury Regulation, §1.41-2. Rather, the amended definition describes the basic requirements for an expense to be a QRE. QREs are the sum of all in-house research expenses and contract research expenses.

The comptroller adds subparagraph (A) to explain that in-house research expenses include wages paid to an employee for qualified services, supplies, and amounts paid to another person for the right to use computers. The comptroller adds clause (i) to explain that qualified services include engaging in qualified research, or the direct supervision or direct support of qualified research. In subclauses (I) through (III), the comptroller defines the terms "engaging in qualified research," "direct supervision," and "direct support."

The comptroller adds clause (ii) to explain that supplies include any tangible personal property other than land, improvements to land, or property of a character subject to the allowance for depreciation.

The comptroller adds clause (iii) to explain that certain items purchased without paying sales or use tax are not included in the definition of in-house research expenses. This is because certain sales or use tax exemptions require that the item be used in specific ways that are not compatible with the item's use in qualified research. The comptroller provides five examples illustrating this clause.

Subclause (I) contains examples illustrating this clause. Item (-a-) identifies two sales or use tax exemptions which are excluded under this clause: the manufacturing exemption under Tax Code, §151.318 (Property Used in Manufacturing) and the sale for resale exemption under Tax Code, §151.302 (Sales for Resale). To qualify for the manufacturing exemption, items used by a manufacturer must be used in or during the actual manufacturing, processing, or fabricating of tangible personal property for ultimate sale. IRC §41 (d)(4)(A) excludes: "any research conducted after the beginning of commercial production of the business component." A taxable entity cannot claim both the franchise tax credit and sales tax exemption for the same purchases or activities. The sales tax manufacturing exemption applies to items used to produce items for ultimate sale to a cus-

tomer, while the franchise tax R&D credit excludes items that are ready for commercial sale or use. Thus, a taxable entity cannot claim both the credit and exemption for the same activities. Furthermore, under Tax Code, §151.318 (c)(3), the manufacturing exemption excludes "equipment or supplies used in research or development of new products." While this exclusion to the manufacturing exemption is not directly tied to the definition of qualified research applicable to the franchise tax R&D credit, it does indicate that the manufacturing exemption was not intended to apply to research and development activities. To qualify for the sale for resale exemption, an item must be purchased with the intent to resell it to someone else, either in the form or condition in which it is acquired or as an attachment to or an integral part of other tangible personal property or taxable service. *See* Tax Code, §151.006 ("Sale for Resale."). Items used in qualified research are not resold and do not qualify for the sale-for-resale exemption.

Item (-b-) identifies three types of purchases that are not excluded under this clause: purchases of water, Sulphur, and items for which sales or use tax was paid to another state. These items are not taxable for reasons unrelated to the use of the items so there is not an inherent conflict with these items being used in qualified research, unlike the manufacturing or resale exemptions.

Subclause (II) explains that if the item were actually used in qualified research after claiming an exemption, that item may be included as an in-house research expense if sales or use tax, penalty, and interest is paid on the item.

The comptroller adds clause (iv) to explain that wages are defined by reference to IRC §3401(a) (Definitions). The comptroller adds clause (v) to explain how to allocate wages between qualified services and nonqualified services when an employee performs both types of services. The comptroller adds clause (vi) to explain that if over 80% of the services an employee provides are qualified services, then all of the services provided by that employee are qualified services.

The comptroller adds subparagraph (B) to provide that contract research expenses are 65% of any amount paid by the taxable entity to another person for qualified research. In this subparagraph, the comptroller explains: the type of agreement that is necessary for an expense to be a contract research expense; that payments contingent upon the success of the research are not contract research expenses; that qualified research is performed on behalf of a taxable entity if that taxable entity has a right to the research results; and with respect to which report year the contract research expenses can be taken. The comptroller cross-references IRC, §41(b), which provides that the allowable percentage of contract research expenses can change in certain circumstances.

The comptroller deletes paragraph (10), which contained a definition for the term research and development credit. This term is only used once in the section, in subsection (j)(2)(A), which includes information concerning the January 1, 2008 repeal of Tax Code, Chapter 171, Subchapter O (Tax Credit for Certain Research and Development Activities). This information sufficiently distinguishes the prior credit from the current credit without the need for a separate definition.

The comptroller adds new subsections (c) and (d) and reletters subsequent subsections.

In new subsection (c), the comptroller discusses the application of the Four-Part Test to explain the basic requirements for research activities to be qualified research. The comptroller bases this subsection primarily on IRC, §41(d) and Treasury Regulation, §1.41-4.

In new paragraph (1), the comptroller describes the four individual components of the Four-Part Test: subparagraph (A) describes the Section 174 Test; subparagraph (B) describes the Discovering Technological Information Test; subparagraph (C) describes the Business Component Test; and subparagraph (D) describes the Process of Experimentation Test. In subparagraph (D), the comptroller provides several examples illustrating the Process of Experimentation Test.

In new paragraph (2), the comptroller explains that the Four-Part Test applies separately to each business component of the taxable entity.

In new paragraph (3), the comptroller explains that, if the whole business component does not meet the requirements of the Four-Part Test, the taxable entity may then shrink back the business component to the next most significant subset of elements of the business component. This process continues until the Four-Part Test is satisfied, or the most basic element of the product fails the Four-Part Test.

In new paragraph (4), the comptroller explains how the Four-Part Test applies to software development activities. The comptroller also identifies a list of software development activities that are likely to be qualified research and a list of software development activities that are unlikely to be qualified research. The explanation and lists in this paragraph are adapted from the Internal Revenue Service's Audit Guidelines on the Application of Process of Experimentation for all Software.

In new subsection (d), the comptroller lists activities that do not constitute qualified research. This list is based on IRC, §41(d)(4) and Treasury Regulation, §1.41-4(c) (Excluded activities). The discussion of the funded research exclusion is also based on Treasury Regulation, §1.41-4A(d) (Qualified research for taxable years beginning before January 1, 1986). This subsection contains examples for the research after commercial production exclusion and the adaptation of existing business components exclusion.

The comptroller amends relettered subsection (e) by moving the current language to paragraph (1) and adding two new paragraphs. The comptroller adds new paragraph (2) to explain that the taxable entity has the burden of proof to establish its entitlement to, and value of, the credit by clear and convincing evidence. In subparagraph (A), the comptroller explains that all qualified research expenses must be connected to specific qualified research activities. In subparagraph (B), the comptroller explains that all qualified research expenses must be supported by contemporaneous business records. The comptroller defines these contemporaneous business records for wages, supplies, and contract research expenses, including a non-exhaustive list of examples for each type of expense. The comptroller adds new paragraph (3) to explain that any determination by the IRS that a taxable entity is entitled to the federal research and development credit does not bind the comptroller when determining a taxable entity's eligibility for the credit.

The comptroller amends relettered subsection (g)(3) to change the term "this state" to "Texas."

The comptroller amends paragraph (5) to provide additional details regarding verification of prior year QREs when those prior years are outside of the statute of limitations.

The comptroller adds paragraph (6) to explain that if a taxable entity has any QREs under a higher education contract, then all of its QREs are included in the calculation at the higher rate allowed by paragraph (3) or (4) of subsection (g). This is the case even if not all of the QREs relate to higher education contracts.

The comptroller restructures relettered subsection (i) into five paragraphs. The first sentence of the current subsection is now new paragraph (1). New paragraph (2) provides that each member of a combined group determines the amount of the credit separately and then the combined group includes the credits of each member on the combined report. New paragraph (3) explains that a combined group must prorate any carryforward of the credit among the members of the combined group. This prorated carryforward credit remains with the member of the combined group for future tax periods, regardless of whether the member remains in the same combined group. New paragraph (4) explains that the higher education rate described in relettered subsections (g)(3) - (4) applies separately to each member of the combined group, and not to the combined group as a whole. One member of a combined group qualifying for the higher education rate does not qualify any other member of the combined group for that rate. New paragraph (5) contains the second sentence of the current subsection, which the comptroller amends to state that a combined group is the taxable entity for the purposes of claiming the credit.

The comptroller amends relettered subsection (l) by adding paragraph (3) to explain that the comptroller may verify credit carryforwards by verifying the qualified research activities on which the credit that created the carryforward was based. This verification may occur even if the statute of limitations has expired for the report year on which the original credit was claimed. This verification will not result in an assessment of tax, penalty, or interest for any period for which the statute of limitation is closed, but may result in an adjustment to the credit carryforward for any periods for which the statute of limitations is open.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: 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' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by improving the clarity and implementation of the section. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant anticipated economic costs 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.

The amendments are 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 amendments implement Tax Code, Chapter 171, Subchapter M (Tax Credit for Certain Research and Development Activities).

§3.599. Margin: Research and Development Activities Credit.

(a) Effective dates.

(1) The provisions of this section apply to franchise tax reports originally due on or after January 1, 2014.

(2) These provisions expire on December 31, 2026. The credits allowed under this section cannot be established on a report originally due after December 31, 2026. The expiration does not affect the carryforward of a credit authorized under these provisions as provided in subsection (l) [~~(i)~~] of this section and established on a report originally due prior to the expiration date of these provisions.

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

(1) Business component--A business component is any product, process, computer software, technique, formula, or invention, which is to be held for sale, lease, or license, or used by the taxable entity in a trade or business of the taxable entity. [~~Affiliated group--Entities in which a controlling interest is owned by a common owner, either corporate or noncorporate, or by one or more of the member entities.~~]

(2) Combined group--Taxable entities that are part of an affiliated group engaged in a unitary business and that are required to file a combined group report under Tax Code, §171.1014 (Combined Reporting; Affiliated Group Engaged in Unitary Business).

(3) Controlling interest--

(A) For a corporation, either more than 50%, owned directly or indirectly, of the total combined voting power of all classes of stock of the corporation, or more than 50%, owned directly or indirectly, of the beneficial ownership interest in the voting stock of the corporation.

(B) For a partnership, association, trust, or other entity other than a limited liability company, more than 50%, owned directly or indirectly, of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity.

(C) For a limited liability company, either more than 50%, owned directly or indirectly, of the total membership interest of the limited liability company or more than 50%, owned directly or indirectly, of the beneficial ownership interest in the membership interest of the limited liability company.

(4) Four-Part Test--The test described in IRC, §41(d) (Qualified research defined) that determines whether research activities are qualified research. The four parts of the test are the Section 174 Test, the Discovering Technological Information Test, the Business Component Test, and the Process of Experimentation Test.

(5) [~~(4)~~] Internal Revenue Code (IRC)--The Internal Revenue Code of 1986 in effect on December 31, 2011, excluding any changes made by federal law after that date, but including any regulations that are later adopted under that code applicable to the tax year to which the provisions of the code in effect on that date applied. A regulation adopted after December 31, 2011 is only included in this term to the extent that the regulation requires a taxable entity to apply the regulation to the 2011 federal income tax year.

(6) [~~(5)~~] Public or private institution of higher education--

(A) an institution of higher education, as defined by Education Code, §61.003 (Definitions); or

(B) a private or independent institution of higher education, as defined by Education Code, §61.003.

(7) [~~(6)~~] Qualified research--This term has the meaning given in IRC [~~Internal Revenue Code~~], §41(d), except that the research must be conducted in Texas.Qualified research activities must satisfy each part of the Four-Part Test.

(8) [~~(7)~~] Qualified research expense--This term has the meaning given in IRC [~~Internal Revenue Code~~], §41(b) (Qualified research expenses), except that the expense must be for qualified research conducted in Texas. IRC, §41(b) defines qualified research expenses as the sum of in-house research expenses and contract research expenses.

(A) In-house research expenses include any wages paid or incurred for qualified services performed by an employee; any amount paid or incurred for supplies used in the conduct of qualified research; and any amount paid or incurred to another person for the right to use computers in the conduct of qualified research.

(i) Qualified services include an employee either engaging in qualified research or engaging in the direct supervision or direct support of qualified research.

(I) For the purposes of this clause, the term "engaging in qualified research" means the actual conduct of qualified research. For example, a scientist conducting laboratory experiments could be engaging in qualified research.

(II) For the purposes of this clause, the term "direct supervision" means the immediate supervision (first-line management) of qualified research. For example, a research scientist who directly supervises laboratory experiments, but who may not actually perform experiments, could be directly supervising qualified research. "Direct supervision" does not include supervision by a higher-level manager to whom first-line managers report, even if that manager is a qualified research scientist.

(III) For the purposes of this clause, the term "direct support" means services in the direct support of either: Persons engaging in actual conduct of qualified research, or persons who are directly supervising persons engaging in the actual conduct of qualified research.

(-a-) Direct support of research includes, but is not limited to, the services of: a secretary for typing reports describing laboratory results derived from qualified research; a laboratory worker for cleaning equipment used in qualified research; a clerk for compiling research data; and a machinist for machining a part of an experimental model used in qualified research.

(-b-) Direct support of research activities does not include general administrative services, or other services only indirectly of benefit to research activities. For example, services of: payroll personnel in preparing salary checks of laboratory scientists; an accountant for accounting for research expenses; a janitor for general cleaning of a research laboratory; or officers engaged in supervising financial or personnel matters do not qualify as direct support of research. This is true whether general administrative personnel are part of the research department or in a separate department.

(-c-) Direct support does not include supervision. Supervisory services constitute "qualified services" only to the extent provided in subclause (II) of this clause.

(ii) Supplies are any tangible property other than land, improvements to land, or property of a character subject to the allowance for depreciation.

(iii) If a taxable entity claimed a sales or use tax exemption under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) when it purchased a taxable item, and that exemption is for a use other than use in qualified research, the item is excluded from being an in-house research expense, even if it otherwise meets the definition of supplies in clause (ii) of this subparagraph. Exemptions or exclusions that are not based on the use of an item do not result in an exclusion from being an in-house research expense under this clause.

(I) For example:

(-a-) An item for which a taxable entity claimed the manufacturing exemption under Tax Code, §151.318 (Property Used in Manufacturing) or the sale for resale exemption under Tax Code, §151.302 (Sales for Resale) is excluded from being an in-house research expense under this clause.

(-b-) Water, sulphur, and items for which a taxable entity paid sales or use tax to another state are not subject to sales or use tax under Tax Code, §151.315 (Water), Tax Code, §151.3171 (Sulphur), and Tax Code, §151.303 (Previously Taxed Items: Use Tax Exemption or Credit), but are not excluded from being an in-house research expense under this clause.

(II) If an item is excluded from being an in-house research expense under this clause, and the taxable entity used that item in qualified research activities rather than the use for which the sales or use tax exemption was granted, the taxable entity may pay any sales or use tax, and any applicable penalty or interest, related to the purchase or use of the item. Once the applicable sales or use tax, penalty, and interest is paid, the taxable entity may include the cost of that item as an in-house research expense.

(iv) The term wages has the meaning given such term by IRC, §3401(a) (Wages). In the case of an employee within the meaning of IRC, §401(c)(1) (Self-employed individual treated as employee) the term wages includes the earned income as defined in IRC, §401(c)(2) (Earned income) of such employee. The term wages does not include any amount taken into account in determining the work opportunity credit under IRC, §51(a) (Determination of amount).

(v) If an employee performed both qualified services and nonqualified services, only wages for qualified services constitute an in-house research expense. Unless the taxable entity can demonstrate another method is more appropriate, the amount of wages that are in-house research expenses shall be determined by multiplying the total amount of wages paid to or incurred for the employee during the report year by the ratio of the total time actually spent by the employee in the performance of qualified services for the taxable entity to the total time spent by the employee in the performance of all services for the taxable entity during the report year.

(vi) Notwithstanding clause (v) of this subparagraph, if the ratio of the total time actually spent by an employee in the performance of qualified services for the taxable entity to the total time spent by the employee in the performance of all services for the taxable entity during the report year is greater than 80%, all services performed by that employee are considered qualified services.

(B) Contract research expenses are 65% of any amount paid or incurred by the taxable entity to any person, other than an employee of the taxable entity, for qualified research. If a taxable entity satisfies the requirements of IRC §41 (b)(3)(C) (Amounts paid to certain research consortia) or IRC §41 (b)(3)(D) (Amounts paid to eligible small businesses, universities, and Federal laboratories) the percentage

of allowable contract research expenses is increased as provided by those subparagraphs.

(i) An expense is paid or incurred for qualified research only to the extent that it is paid or incurred pursuant to an agreement that:

(I) is entered into prior to the performance of the qualified research;

(II) provides that research be performed on behalf of the taxable entity; and

(III) requires the taxable entity to bear the expense even if the research is not successful.

(ii) If an expense is paid or incurred by the taxable entity pursuant to an agreement under which payment is contingent on the success of the research, then the expense is not a contract research expense because the expense is considered paid for the product or result of the research rather than the performance of the research. This clause only applies to that portion of a payment that is contingent on the success of the research.

(iii) Qualified research is performed on behalf of the taxable entity if the taxable entity has a right to the research results, even if that right is not exclusive.

(iv) If any contract research expenses are paid or incurred during one report year for qualified research that is conducted in a subsequent report year, the expenses shall be treated as paid or incurred during the report year in which the qualified research is conducted.

(v) See IRC, §41(b) for special circumstances that change the percentage that applies to contract research expenses.

(9) [~~(8)~~] Registration Number--The Texas Qualified Research Registration Number [~~number~~] issued by the comptroller to a person who submits the Texas Registration for Qualified Research and Development Sales Tax Exemption form.

(10) [~~(9)~~] Research and development activities credit (credit)--A credit against franchise tax for qualified research expenses that is allowed under Tax Code, Chapter 171, Subchapter M (Tax Credit for Certain Research and Development Activities).

~~[(10) Research and development credit--A credit against franchise tax for research and development expenses allowed under Tax Code, Chapter 171, Subchapter O, and established on a franchise tax report originally due prior to January 1, 2008.]~~

(11) Tax period--The period on which a franchise tax report is based as provided by §3.584(c) of this title (relating to Margin: Reports and Payments).

(c) Application of the Four-Part Test. Research activities must satisfy each part of the Four-Part Test, as described in paragraph (1) of this subsection, to be qualified research.

(1) Four-Part Test.

(A) Section 174 Test. Expenditures related to the research must be eligible to be treated as expenses under IRC, §174 (Research and experimental expenditures).

(i) Expenditures are eligible to be treated as expenses under IRC, §174, if the expenditures are incurred in connection with the taxable entity's trade or business and represent a research and development cost in the experimental or laboratory sense. Expenditures represent research and development costs in the experimental or laboratory sense if they are for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product. Uncertainty exists if the information available to the taxable entity does not establish the capability or method for developing or improving the product or the appropriate design of the product.

(ii) For the purposes of this test, the term "product" includes any pilot model, process, formula, invention, technique, patent, or similar property, and includes products to be used by the taxable entity in its trade or business as well as products to be held for sale, lease, or license.

(iii) Expenditures for the following are not eligible to be treated as expenses under IRC, §174:

(I) land;

(II) depreciable property;

(III) the ordinary testing or inspection of materials or products for quality control;

(IV) efficiency surveys;

(V) management studies;

(VI) consumer surveys;

(VII) advertising or promotions;

(VIII) the acquisition of another's patent, model, production, or process; or

(IX) research in connection with literary, historical, or similar projects.

(B) Discovering Technological Information Test. The research must be undertaken for the purpose of discovering information that is technological in nature.

(i) Research is undertaken for the purpose of discovering technological information if it is intended to eliminate uncertainty concerning the development or improvement of a business component. Uncertainty exists if the information available to the taxable entity does not establish the capability or method for developing or improving the business component, or the appropriate design of the business component.

(ii) In order to satisfy the requirement that the research is technological in nature, the process of experimentation used to discover information must fundamentally rely on principles of the physical or biological sciences, engineering, or computer science. A taxable entity may employ existing technologies and may rely on existing principles of the physical or biological sciences, engineering, or computer science to satisfy this requirement.

(iii) A determination that research is undertaken for the purpose of discovering information that is technological in nature does not require that the taxable entity:

(I) seek to obtain information that exceeds, expands, or refines the common knowledge of skilled professionals in the particular field of science or engineering in which the taxable entity is performing the research; or

(II) succeed in developing a new or improved business component.

(C) Business Component Test. The application of the technological information for which the research is undertaken must be intended to be useful in the development of a new or improved business component of the taxable entity, which may include any product, process, computer software, technique, formula, or invention that is to

be held for sale, lease, or license, or used by the taxable entity in a trade or business of the taxable entity.

(i) If a taxable entity provides a service to a customer, the service provided to that customer is not a business component because a service is not a product, process, computer software, technique, formula, or invention. However, a product, process, computer software, technique, formula, or invention used by a taxable entity to provide services to its customers may be a business component.

(ii) A design is not a business component because a design is not a product, process, computer software, technique, formula, or invention. While uncertainty as to the appropriate design of a business component is a qualifying uncertainty for the Section 174 Test and the Discovering Technological information test, the design itself is not a business component. For example, the design of a structure is not a business component, although the structure itself may be a business component. Similarly, a blueprint or other plan used to construct a structure that embodies a design is not a business component.

(D) Process of Experimentation Test. Substantially all of the research activities must constitute elements of a process of experimentation for a qualified purpose. A process of experimentation is undertaken for a qualified purpose if it relates to a new or improved function, performance, reliability, or quality of a business component. Any research relating to style, taste, cosmetic, or seasonal design factors does not satisfy the Process of Experimentation Test.

(i) A process of experimentation is a process designed to evaluate one or more alternatives to achieve a result where the capability or the method of achieving that result, or the appropriate design of that result, is uncertain as of the beginning of the taxable entity's research activities.

(ii) A process of experimentation must:

(I) be an evaluative process and generally should be capable of evaluating more than one alternative; and

(II) fundamentally rely on the principles of the physical or biological sciences, engineering, or computer science and involve:

(-a-) the identification of uncertainty concerning the development or improvement of a business component;

(-b-) the identification of one or more alternatives intended to eliminate that uncertainty; and

(-c-) the identification and the conduct of a process of evaluating the alternatives through, for example, modeling, simulation, or a systematic trial and error methodology.

(iii) A taxable entity may undertake a process of experimentation if there is no uncertainty concerning the taxable entity's capability or method of achieving the desired result so long as the appropriate design of the desired result is uncertain as of the beginning of the taxable entity's research activities. Uncertainty concerning the development or improvement of the business component (e.g., its appropriate design) does not establish that all activities undertaken to achieve that new or improved business component constitute a process of experimentation.

(iv) The substantially all requirement of this subparagraph is satisfied only if 80% or more of a taxable entity's research activities, measured on a cost or other consistently applied reasonable basis constitute elements of a process of experimentation that relates to a new or improved function, performance, reliability, or quality. The substantially all requirement is satisfied even if the remainder of a taxable entity's research activities with respect to the business component do not constitute elements of a process of experimentation that relates to a new or improved function, performance, reliability, or quality.

(v) Non-experimental methods, such as simple trial and error, brainstorming, or reverse engineering, are not considered a process of experimentation.

(vi) Factors considered in determining whether a trial and error methodology is experimental systematic trial and error or non-experimental simple trial and error include, but are not limited to:

(I) whether the person conducting the trial and error methodology stops testing alternatives once a single acceptable result is found or continues to find multiple acceptable results for comparison;

(II) whether all the results of the trial and error methodology are recorded for evaluation;

(III) whether there is a written procedure for conducting the trial and error methodology; and

(IV) whether there is a written procedure for evaluating the results of the trial and error methodology.

(vii) Examples.

(I) Example 1. A taxable entity is engaged in the business of developing and manufacturing widgets. The taxable entity wants to change the color of its blue widget to green. The taxable entity obtains several different shades of green paint from various suppliers. The taxable entity paints several sample widgets, and surveys its customers to determine which shade of green its customers prefer. The taxable entity's activities to change the color of its blue widget to green do not satisfy the Process of Experimentation Test because its activities are not undertaken for a qualified purpose. All of the taxable entity's research activities are related to style, taste, cosmetic, or seasonal design factors.

(II) Example 2. The taxable entity in Example 1 chooses one of the green paints. The taxable entity obtains samples of the green paint from a supplier and determines that it must modify its painting process to accommodate the green paint because the green paint has different characteristics from other paints it has used. The taxable entity obtains detailed data on the green paint from its paint supplier. The taxable entity also consults with the manufacturer of its paint spraying machines. The manufacturer informs the taxable entity that it must acquire new nozzles that operate with the green paint it wants to use because the current nozzles do not work with the green paint. The taxable entity tests the new nozzles, using the green paint, to ensure that they work as specified by the manufacturer of the paint spraying machines. The taxable entity's activities to modify its painting process are not qualified research. The taxable entity did not conduct a process of evaluating alternatives in order to eliminate uncertainty regarding the modification of its painting process. Rather, the manufacturer of the paint machines eliminated the taxable entity's uncertainty regarding the modification of its painting process. The taxable entity's activities to test the nozzles to determine if the nozzles work as specified by the manufacturer of the paint spraying machines are in the nature of routine or ordinary testing or inspection for quality control.

(III) Example 3. A taxable entity is engaged in the business of manufacturing food products and currently manufactures a large-shred version of a product. The taxable entity seeks to modify its current production line to permit it to manufacture both a large-shred version and a fine-shred version of one of its food products. A smaller, thinner shredding blade capable of producing a fine-shred version of the food product is not commercially available. Thus, the

taxable entity must develop a new shredding blade that can be fitted onto its current production line. The taxable entity is uncertain concerning the design of the new shredding blade because the material used in its existing blade breaks when machined into smaller, thinner blades. The taxable entity engages in a systematic trial and error process of analyzing various blade designs and materials to determine whether the new shredding blade must be constructed of a different material from that of its existing shredding blade and, if so, what material will best meet its functional requirements. The taxable entity's activities to modify its current production line by developing the new shredding blade satisfy the Process of Experimentation Test. Substantially all of the taxable entity's activities constitute elements of a process of experimentation because it evaluated alternatives to achieve a result where the method of achieving that result, and the appropriate design of that result, were uncertain as of the beginning of the taxable entity's research activities. The taxable entity identified uncertainties related to the development of a business component, and identified alternatives intended to eliminate these uncertainties. Furthermore, the taxable entity's process of evaluating identified alternatives was technological in nature and was undertaken to eliminate the uncertainties.

(IV) Example 4. A taxable entity is in the business of designing, developing and manufacturing automobiles. In response to government-mandated fuel economy requirements, the taxable entity seeks to update its current model vehicle and undertakes to improve aerodynamics by lowering the hood of its current model vehicle. The taxable entity determines, however, that lowering the hood changes the air flow under the hood, which changes the rate at which air enters the engine through the air intake system, which reduces the functionality of the cooling system. The taxable entity's engineers are uncertain how to design a lower hood to obtain the increased fuel economy, while maintaining the necessary air flow under the hood. The taxable entity designs, models, simulates, tests, refines, and re-tests several alternative designs for the hood and associated proposed modifications to both the air intake system and cooling system. This process enables the taxable entity to eliminate the uncertainties related to the integrated design of the hood, air intake system, and cooling system. Such activities constitute 85% of its total activities to update its current model vehicle. The taxable entity then engages in additional activities that do not involve a process of evaluating alternatives in order to eliminate uncertainties. The additional activities constitute only 15% of the taxable entity's total activities to update its current model vehicle. In this case substantially all of the taxable entity's activities constitute elements of a process of experimentation because it evaluated alternatives to achieve a result where the method of achieving that result, and the appropriate design of that result, were uncertain as of the beginning of its research activities. The taxable entity identified uncertainties related to the improvement of a business component and identified alternatives intended to eliminate these uncertainties. Furthermore, the taxable entity's process of evaluating the identified alternatives was technological in nature and was undertaken to eliminate the uncertainties. Because 85% of the taxable entity's activities to update its current model vehicle constitute elements of a process of experimentation that relates to a new or improved function, performance, reliability, or quality, all of its activities satisfy the Process of Experimentation Test.

(V) Example 5. A taxable entity is in the business of providing building and construction services, including the construction of warehouses, strip malls, office buildings, and other commercial structures. The taxable entity is engaged to construct a structure in a part of Texas where foundation problems are common. The taxable entity's engineers were uncertain how to design the structure to ensure stability of the structure's foundation because the taxable entity had never designed a structure in a similar location. The taxable entity's engineers used their professional experience and various building codes to determine how to design the foundation based on the conditions at the construction site. The engineers chose to use piles in the foundation. The taxable entity constructed a test pile on site to confirm whether this would work in the conditions present on the construction site. This test pile would become part of the foundation of the structure regardless of whether the engineers had to redesign the additional piles required for the foundation. The taxable entity's activities in using professional experience and business codes to design the foundation did not meet the Process of Experimentation Test because the activities did not resolve technological uncertainties through an experimental process. Constructing the test pile also did not meet the Process of Experimentation Test because it was not an evaluative process.

(VI) Example 6. A taxable entity is in the business of providing building and construction services, including the construction of warehouses, strip malls, office buildings, and other commercial structures. For one of its projects to construct an office building, the taxable entity was uncertain how to design the layout of the electrical systems. The taxable entity's employees held on-site meetings to discuss different options, such as running the wire under the floor or through the ceiling, but did not actually experiment by installing wire in different locations. The taxable entity did use computer-aided simulation and modeling to produce the final electrical system layout, but, in this case, such use was not an experimental process. The taxable entity's activities did not satisfy the Process of Experimentation Test because it did not conduct an experimental process of evaluating alternatives to eliminate a technological uncertainty.

(VII) Example 7. A taxable entity is an oil and gas operator that recently acquired rights to drill in an area in which it had not previously operated. The taxable entity decided to use horizontal drilling in this area, but it had never drilled a horizontal well and was uncertain how to successfully execute the horizontal drilling. At the time the taxable entity began horizontal drilling, the technology to drill horizontal wells was established. The taxable entity selected technology from existing commercially available options to use in its horizontal drilling program. The taxable entity's activities did not satisfy the Process of Experimentation Test because evaluating commercially available options does not constitute a process of experimentation.

(VIII) Example 8. A taxable entity is an oil and gas operator that recently acquired rights to drill in an area in which it had not previously operated. The taxable entity decided to use horizontal drilling in this area. The taxable entity had drilled a horizontal well before in a different formation and at different depths. However, it had never drilled a horizontal well in this formation or at the required depths and was uncertain how to successfully execute the horizontal drilling. The taxable entity utilized its existing technology to perform its horizontal drilling operations in this area and the existing technology was successful. The taxable entity's activities did not satisfy the Process of Experimentation Test because the taxable entity did not evaluate any alternative drilling methods.

(IX) Example 9. A taxable entity sought to discover novel cancer immunotherapies. The taxable entity was uncertain as to the appropriate design of the proteins to be used as a drug candidate. The taxable entity identified several alternative protein constructs and used a process to test them. The taxable entity's process involved testing the constructs using in vitro functional assays and binding assays, and either modifying the designs or discarding them and repeating the previous steps. The taxable entity took the resulting products from the in vitro testing and tested the drug candidate in living organisms. This process evaluated the various alternatives identified by the taxable entity. The taxable entity's activities satisfied the Process of Experimentation Test.

(2) Application of the Four-Part Test to business components. The Four-Part Test is applied separately to each business component of the taxable entity. Any plant process, machinery, or technique for commercial production of a business component is treated as a separate business component from the business component being produced.

(3) Shrink-back rule. The Four-Part Test is first applied at the level of the discrete business component used by the taxable entity in a trade or business of the taxable entity. If the requirements of the Four-Part Test are not met at that level, then they are applied at the next most significant subset of elements of the business component. This shrinking back of the product continues until either a subset of elements of the product that satisfies the requirements of the Four-Part Test is reached, or the most basic element of the product is reached, and such element fails to satisfy any part of the Four-Part Test.

(4) Software development as qualified research. In determining if software development activities constitute qualified research, the comptroller will consider the facts and circumstances of each activity.

(A) Application of Four-Part Test to software development activities.

(i) A taxable entity must prove that a software development activity is qualified research and meets all the requirements of the Four-Part Test under paragraph (1) of this subsection, even if the activity is likely to qualify as described in subparagraph (B) of this paragraph.

(ii) A taxable entity may prove that a software development activity described as unlikely to qualify in subparagraph (C) of this paragraph, is qualified research by providing evidence that the activity meets all the requirements of the Four-Part Test under paragraph (1) of this subsection.

(B) Software development activities likely to qualify. Types of activities likely to qualify include, but are not limited to:

(i) developing the initial release of an application software product that includes new constructs, such as new architectures, new algorithms, or new database management techniques;

(ii) developing system software, such as operating systems and compilers;

(iii) developing specialized technologies, such as image processing, artificial intelligence, or speech recognition; and

(iv) developing software as part of a hardware product where the software interacts directly with that hardware in order to make the hardware/software package function as a unit.

(C) Software development activities unlikely to qualify. Types of activities unlikely to qualify include, but are not limited to:

(i) maintaining existing software applications or products;

(ii) configuring purchased software applications;

(iii) reverse engineering of existing applications;

(iv) performing studies, or similar activities, to select vendor products;

(v) detecting flaws and bugs directed toward the verification and validation that the software was programmed as intended and works correctly;

(vi) modifying an existing software business component to make use of new or existing standards or devices, or to be compliant with another vendor's product or platform;

(vii) developing a business component that is substantially similar in technology, functionality, and features to the capabilities already in existence at other companies;

(viii) upgrading to newer versions of hardware or software or installing vendor-fix releases;

(ix) re-hosting or porting an application to a new hardware such as from mainframe to PC, or software platform, such as Windows to UNIX, or rewriting an existing application in a new language, such as rewriting a COBOL mainframe application in C++;

(x) writing hardware device drivers to support new hardware, such as disks, scanners, printers, or modems;

(xi) performing data quality, data cleansing, and data consistency activities, such as designing and implementing software to validate data fields, clean data fields, or make the data fields consistent across databases and applications;

(xii) bundling existing individual software products into product suites, such as combining existing word processor, spreadsheet, and slide presentation software applications into a single suite;

(xiii) expanding product lines by purchasing other products;

(xiv) developing interfaces between different software applications;

(xv) developing vendor product extensions;

(xvi) designing graphic user interfaces;

(xvii) developing functional enhancements to existing software applications/products;

(xviii) developing software as an embedded application, such as in cell phones, automobiles, and airplanes;

(xix) developing software utility programs, such as debuggers, backup systems, performance analyzers, and data recovery;

(xx) changing from a product based on one technology to a product based on a different or newer technology; and

(xxi) adapting and commercializing technology developed by a consortium or open software group.

(d) Excluded research activities. Qualified research does not include the activities described in this subsection.

(1) Research after commercial production. Any research conducted after the beginning of commercial production of the business component.

(A) Activities are conducted after the beginning of commercial production of a business component if such activities are conducted after the component is developed to the point where it is ready for commercial sale or use or meets the basic functional and economic requirements of the taxable entity for the component's sale or use.

(B) The following activities are deemed to occur after the beginning of commercial production of a business component:

(i) preproduction planning for a finished business component;

(ii) tooling-up for production;

(iii) trial production runs;

(iv) troubleshooting involving detecting faults in production equipment or processes;

(v) accumulating data relating to production processes;

(vi) debugging flaws in a business component; and

(vii) any activities that involve the use of an item for which the taxable entity claimed the manufacturing exemption under Tax Code, §151.318.

(C) In cases involving development of both a product and a manufacturing or other commercial production process for the product, the research after commercial production exclusion applies separately for the activities relating to the development of the product and the activities relating to the development of the process. For example, even after a product meets the taxable entity's basic functional and economic requirements, activities relating to the development of the manufacturing process may still constitute qualified research, provided that the development of the process itself separately satisfies the requirements of this section, and the activities are conducted before the process meets the taxable entity's basic functional and economic requirements or is ready for commercial use.

(D) Clinical testing of a pharmaceutical product prior to its commercial production in the United States is not treated as occurring after the beginning of commercial production even if the product is commercially available in other countries. Additional clinical testing of a pharmaceutical product after a product has been approved for a specific therapeutic use by the Food and Drug Administration and is ready for commercial production and sale is not treated as occurring after the beginning of commercial production if such clinical testing is undertaken to establish new functional uses, characteristics, indications, combinations, dosages, or delivery forms for the product. A functional use, characteristic, indication, combination, dosage, or delivery form shall be considered new only if such functional use, characteristic, indication, combination, dosage, or delivery form must be approved by the Food and Drug Administration.

(E) Examples.

(i) Example 1. A taxable entity is a tire manufacturer and develops a new material to use in its tires. The taxable entity conducts research to determine the changes that will be necessary for it to modify its existing manufacturing processes to manufacture the new tire. The taxable entity determines that the new tire material retains heat for a longer period of time than the materials it currently uses for tires, and, as a result, the new tire material adheres to the manufacturing equipment during tread cooling. The taxable entity evaluates several alternatives for processing the treads at cooler temperatures to address this problem, including a new type of belt for its manufacturing equipment to be used in tread cooling. Such a belt is not commercially available. Because the taxable entity is uncertain of the belt design, it develops and conducts sophisticated engineering tests on several alternative designs for a new type of belt to be used in tread cooling until it successfully achieves a design that meets its requirements. The taxable entity then manufactures a set of belts for its production equipment, installs the belts, and tests the belts to make sure they were manufactured correctly. The taxable entity's research with respect to the design of the new belts to be used in its manufacturing of the new tire may be qualified research under the Four-Part Test. However, the taxable entity's expenses to implement the new belts, including the costs to manufacture, install, and test the belts were incurred after the belts met the taxable entity's functional and economic requirements and are excluded as research after commercial production.

(ii) Example 2. For several years, a taxable entity has manufactured and sold a particular kind of widget. The taxable entity initiates a new research project to develop a new or improved widget. The taxable entity's activities to develop a new or improved widget are not excluded from the definition of qualified research under this paragraph. The taxable entity's activities relating to the development of a new or improved widget constitute a new research project to develop a new business component and are not considered activities conducted after the beginning of commercial production.

(iii) Example 3. For the purposes of this example, assume that the taxable entity's development of its products satisfies the Four-Part Test described by subsection (c) of this section and is not otherwise excluded under this subsection. A taxable entity is a manufacturer of integrated circuits for use in specific applications. The taxable entity designs various integrated circuit devices and assembles various product configurations for testing. After an internal process of testing, the taxable entity delivers a sample quantity of the integrated circuit to a potential customer for further testing. At the time when the samples are delivered to the taxable entity's potential customer, the potential customer has not agreed to purchase any integrated circuits from the taxable entity. This process of testing by both the taxable entity and its potential customer continues until an acceptable design is achieved. At that point, the taxable entity and the potential customer enter into an agreement for the delivery of an order of the integrated circuits. In some cases, no acceptable design is achieved, and no agreement is reached with the potential customer. Research activities occurring prior to an agreement are not considered activities conducted after the beginning of commercial production because the integrated circuits were not yet ready for commercial use. Any research that occurs after an agreement is reached are excluded as activities conducted after the beginning of commercial production because the integrated circuits were ready for commercial use once the design was accepted by the potential customer.

(2) Adaptation of existing business components. Activities relating to adapting an existing business component to a particular customer's requirement or need. This exclusion does not apply merely because a business component is intended for a specific customer. For example:

(A) Example 1. A taxable entity is a computer software development firm and owns a general ledger accounting software core program that it markets and licenses to customers. The taxable entity incurs expenditures in adapting the core software program to the requirements of one of its customers. Because the taxable entity's activities represent activities to adapt an existing software program to a particular customer's requirement or need, its activities are excluded from the definition of qualified research under this paragraph.

(B) Example 2. Assume that the customer from Example 1 pays the taxable entity to adapt the core software program to the customer's requirements. Because the taxable entity's activities are excluded from the definition of qualified research, the customer's payments to the taxable entity are not for qualified research and are not considered to be contract research expenses.

(C) Example 3. Assume that the customer from Example 1 uses its own employees to adapt the core software program to its requirements. Because the customer's employees' activities to adapt the core software program to its requirements are excluded from the definition of qualified research, the wages the customer paid to its employees do not constitute in-house research expenses.

(D) Example 4. A taxable entity manufactures and sells rail cars. Because rail cars have numerous specifications related to performance, reliability and quality, rail car designs are subject to exten-

sive, complex testing in the scientific or laboratory sense. A customer orders passenger rail cars from the taxable entity. The customer's rail car requirements differ from those of the taxable entity's other existing customers only in that the customer wants fewer seats in its passenger cars and a higher quality seating material and carpet that are commercially available. The taxable entity manufactures rail cars meeting the customer's requirements. The rail car sold to the customer was not a new business component, but merely an adaptation of an existing business component that did not require a process of experimentation. Thus, the taxable entity's activities to manufacture rail cars for the customer are excluded from the definition of qualified research because the taxable entity's activities represent activities to adapt an existing business component to a particular customer's requirement or need.

(E) Example 5. A taxable entity is a manufacturer and undertakes to create a manufacturing process for a new valve design. The taxable entity determines that it requires a specialized type of robotic equipment to use in the manufacturing process for its new valves. Such robotic equipment is not commercially available. Therefore, the taxable entity purchases existing robotic equipment for the purpose of modifying it to meet its needs. The taxable entity's engineers identify uncertainty that is technological in nature concerning how to modify the existing robotic equipment to meet its needs. The taxable entity's engineers develop several alternative designs, conduct experiments using modeling and simulation in modifying the robotic equipment, and conduct extensive scientific and laboratory testing of design alternatives. As a result of this process, the taxable entity's engineers develop a design for the robotic equipment that meets its needs. The taxable entity constructs and installs the modified robotic equipment on its manufacturing process. The taxable entity's research activities to determine how to modify the robotic equipment it purchased for its manufacturing process are not considered an adaptation of an existing business component.

(F) Example 6. A taxable entity is an oil and gas operator and has been engaged in horizontal drilling for the past ten years. Recently, the taxable entity was hired by a customer to drill in a formation. The drilling objectives included targeting an interval within that formation for horizontal drilling. The taxable entity was uncertain about the successful execution of the horizontal drilling because it had not previously drilled a horizontal well in that formation. The taxable entity was also uncertain about the economic results from the targeted interval. The taxable entity drilled several horizontal wells before its customer was satisfied with the economic results. The taxable entity modified its existing horizontal drilling program based on these results. The taxable entity's activities to identify a horizontal drilling process are excluded from the definition of qualified research because the activities consisted of adapting an existing business component (its existing horizontal drilling process) to meet a particular customer's need.

(G) Example 7. For the purposes of this example, assume that the taxable entity's development of its products satisfies the Four-Part Test described by subsection (c) of this section and is not otherwise excluded under this subsection. A taxable entity is a manufacturer of rigid plastic containers. The taxable entity contracts with major food and beverage manufacturers to provide suitable bottle and packaging designs. The products designed by the taxable entity may be for repeat customers and the sizes and types of bottle may be similar to previous products. The development of each new product, and the production process necessary to produce the products at sufficient production volume, starts from new concept drawings developed by engineers. The taxable entity uses a qualifying process of experimentation to evaluate alternative concepts for the product and production processes. The taxable entity's activities related to both the product and the production process are not excluded from the definition of qualified research as an adaptation of an existing business component.

(3) Duplication of existing business component. Any research related to the reproduction of an existing business component, in whole or in part, from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component. This exclusion does not apply merely because the taxable entity examines an existing business component in the course of developing its own business component.

(4) Surveys, studies, etc. Any efficiency survey; activity relating to management function or technique; market research, testing or development (including advertising or promotions); routine data collection; or routine or ordinary testing or inspection for quality control.

(5) Computer software. Any research activities with respect to internal use software.

(A) For the purposes of this paragraph, internal use software is computer software developed by, or for the benefit of, the taxable entity primarily for internal use by the taxable entity. A taxable entity uses software internally if the software was developed for use in the operation of the business. Computer software that is developed to be commercially sold, leased, licensed, or otherwise marketed for separately stated consideration to unrelated third parties is not internal use software.

(B) Software developed by a taxable entity primarily for internal use by an entity that is part of an affiliated group to which the taxable entity also belongs shall be considered internal use software for purposes of this paragraph.

(C) This exclusion does not apply to software used in:

(i) an activity that constitutes qualified research, or

(ii) a production process that meets the requirements of the Four-Part Test.

(D) The determination as to whether software is internal use software depends on the facts and circumstances existing at the beginning of the development of the software.

(6) Social sciences, etc. Any research in the social sciences, arts, or humanities.

(7) Funded research. Any research funded by any grant, contract, or otherwise by another person or governmental entity.

(A) Research is considered funded if:

(i) the taxable entity performing the research for another person retains no substantial rights to the results of the research; or

(ii) the payments to the researcher are not contingent upon the success of the research.

(B) For the purposes of determining whether a taxable entity retains substantial rights to the results of the research:

(i) Incidental benefits to the researcher from the performance of the research do not constitute substantial rights. For example, increased experience in a field of research is not considered substantial rights.

(ii) A taxable entity does not retain substantial rights in the research it performs if the taxable entity must pay for the right to use the results of the research.

(C) If a taxable entity performing research does not retain substantial rights to the results of the research, the research is considered funded regardless of whether the payments to the researcher are

contingent upon the success of the research. In this case, all research activities are considered funded even if the researcher has expenses that exceed the amount received by the researcher for the research.

(D) If a taxable entity performing research does retain substantial rights to the results of the research and the research is considered funded under subparagraph (A)(ii) of this paragraph, the research is only funded to the extent of the payments and fair market value of any property that the taxable entity becomes entitled to by performing the research. If the expenses related to the research exceed the amount the researcher is entitled to receive, the research is not considered funded with respect to the excess expenses. For example, a taxable entity performs research for another person. Based on the contract, the research activities are considered funded under subparagraph (A)(ii) of this paragraph because payments to the researcher are not contingent on the success of the research. The taxable entity retains substantial rights to the results of the research. The taxable entity is entitled to $100,000 under the contract but spent $120,000 on the research activities. In this case, the research is considered funded with respect to $100,000 and is not considered funded with respect to $20,000.

(E) A taxable entity performing research for another person must identify any other person paying for the research activities and any person with substantial rights to the results of the research.

(F) All agreements, not only research contracts, entered into between the taxable entity performing the research and the party funding the research shall be considered in determining the extent to which the research is funded.

(G) The provisions of this paragraph shall be applied separately to each research project undertaken by the taxable entity.

(e) [~~(c)~~] Eligibility for credit.

(1) A taxable entity is eligible to claim a [~~research and development activities~~] credit for the periods in which the taxable entity is engaged in qualified research and incurs qualified research expenses. The credit may be claimed on a franchise tax report for qualified research expenses incurred during the period on which the report is based.

(2) A taxable entity has the burden of establishing its entitlement to, and the value of, the credit by clear and convincing evidence, including proof that the research activities meet the definition of qualified research, the amount of any qualified research expenses, and applying the shrink-back rule described in subsection (c)(3) of this section.

(A) All qualified research expenses must be paid or incurred in connection with research activities that are qualified research.

(B) All qualified research expenses must be supported by contemporaneous business records.

(i) Contemporaneous business records for wages are records that were created and maintained during the period in which the taxable entity paid the employee to engage in qualified services. This includes, but is not limited to, payroll records, employee job descriptions, performance evaluations, calendars, and appointment books.

(ii) Contemporaneous business records for supplies are records that were created and maintained during the period in which the supplies were purchased. This includes, but is not limited to, inventory records, invoices, purchase orders, and contracts.

(iii) Contemporaneous business records for contract research expenses are records that were created and maintained during the period in which the contract research expenses were paid or incurred. This includes, but is not limited to, contracts and invoices.

(3) An Internal Revenue Service audit determination of eligibility for the federal research and development credit under IRC, §41 (Credit for increasing research activities), whether that determination is that the taxable entity qualifies or does not qualify for the federal research and development credit, is not binding on the comptroller's determination of eligibility for the credit.

(f) [~~(d)~~] Ineligibility for credit.

(1) A taxable entity is not eligible to claim a credit on a franchise tax report for qualified research expenses incurred during the period on which the report is based if the taxable entity, or a member of the taxable entity's combined group[~~, if the taxable entity is a combined group~~], received an exemption from sales and use tax under Tax Code, §151.3182 (Certain Property Used in Research and Development Activities; Reporting of Estimates and Evaluation) during that period.

(2) A taxable entity that is not eligible to claim a credit under this subsection may carry forward an unused credit under subsection (l) of this section. [~~entity's ineligibility under this subsection does not affect the taxable entity's eligibility to claim a carryforward of unused credit under subsection (j) of this section.~~]

(g) [~~(e)~~] Amount of credit.

(1) Qualified research expenses in Texas. Subject to subsection (h) [~~(f)~~] of this section, and except as provided by paragraphs (2), (3), and (4) of this subsection, the credit allowed for any report equals 5.0% of the difference between:

(A) all [~~the~~] qualified research expenses incurred during the period on which the report is based; and

(B) 50% of the average amount of all qualified research expenses incurred during the three tax periods preceding the period on which the report is based.

(2) Entities without qualified research expenses in each of the three preceding tax periods. Except as provided by paragraph (4) of this subsection, if the taxable entity has no qualified research expenses in one or more of the three tax periods preceding the period on which the report is based, the credit for the period on which the report is based equals 2.5% of the qualified research expenses incurred during that period.

(3) Qualified research expenses under a higher education contract. Subject to subsection (h) [~~(f)~~] of this section, and except as provided by paragraph (4) of this subsection, if the taxable entity contracts with one or more public or private institutions of higher education for the performance of qualified research and the taxable entity incurs qualified research expenses in Texas [~~this state~~] under the contract during the period on which the report is based, then the credit for the report equals 6.25% of the difference between:

(A) all qualified research expenses incurred during the period on which the report is based; and

(B) 50% of the average amount of all qualified research expenses incurred during the three tax periods preceding the period on which the report is based.

(4) Entities with qualified research expenses under higher education contracts but without qualified research expenses in each of the three preceding tax periods. If the taxable entity incurs qualified research expenses in Texas under a contract with one or more public or private institutions of higher education for the performance of qualified research during the period on which the report is based, but the taxable entity has no qualified research expenses in one or more of the three tax periods preceding the period on which the report is based, then the

credit for the period on which the report is based equals 3.125% of all qualified research expenses incurred during that period.

(5) Same method of computing qualified research expenses required. Notwithstanding whether the statute of limitations for claiming a credit under this section has expired for any tax period used in determining the average amount of qualified research expenses under paragraph (1)(B) or (3)(B) of this subsection, the determination of which research expenses are qualified research expenses for purposes of computing that average must be made in the same manner as that determination is made for purposes of paragraph (1)(A) or (3)(A) of this subsection. The comptroller may verify the qualified research expenses used to compute the prior year average, even if the statute of limitations for the prior year has expired. This verification will not result in an adjustment to tax, penalty, or interest for any report year for which the statute of limitations is closed.

(6) A taxable entity with any qualified research expenses under higher education contracts in a tax period may include all of its qualified research expenses in the calculations under paragraphs (3) and (4) of this subsection, even if not all of the qualified research expenses are related to higher education contracts. For taxable entities in a combined group, see subsection (i) of this section.

(h) [~~(f)~~] Attribution of expenses following transfer of controlling interest.

(1) If a taxable entity acquires a controlling interest in another taxable entity, or in a separate unit of another taxable entity, during a tax period with respect to which the acquiring taxable entity claims a credit under this section, then the amount of the acquiring taxable entity's qualified research expenses equals the sum of:

(A) the amount of qualified research expenses incurred by the acquiring taxable entity during the period on which the report is based; and

(B) subject to paragraph (4) of this subsection, the amount of qualified research expenses incurred by the acquired taxable entity or unit during the portion of the period on which the report is based that precedes the date of the acquisition.

(2) A taxable entity that sells or otherwise transfers to another taxable entity a controlling interest in another taxable entity, or in a separate unit of a taxable entity, during a period on which a report is based may not claim a credit under this section for qualified research expenses incurred by the transferred taxable entity or unit during the period if:

(A) the taxable entity that makes the sale or transfer is ineligible for the credit under subsection (f) [~~(d)~~] of this section; or

(B) the acquiring taxable entity claims a credit under this section for the corresponding period.

(3) If during any of the three tax periods following the period in which a sale or other transfer described by paragraph (2) of this subsection occurs, the taxable entity that sold or otherwise transferred the controlling interest reimburses the acquiring taxable entity for research activities conducted on behalf of the taxable entity that made the sale or other transfer, the amount of the reimbursement is:

(A) included as qualified research expenses incurred by the taxable entity that made the sale or other transfer for the tax period during which the reimbursement was paid, subject to paragraph (5) of this subsection; and

(B) excluded from the qualified research expenses incurred by the acquiring taxable entity for the tax period during which the reimbursement was paid.

(4) An acquiring taxable entity may not include on a report the amount of qualified research expenses otherwise authorized by paragraph (1)(B) of this subsection if the taxable entity that made the sale or other transfer described by paragraph (2) of this subsection received an exemption under Tax Code, §151.3182 during the portion of the period on which the acquiring taxable entity's report is based that precedes the date of the acquisition.

(5) A taxable entity that makes a sale or other transfer described by paragraph (2) of this subsection may not include on a report the amount of reimbursement otherwise authorized by paragraph (3)(A) of this subsection if the reimbursement is for research activities that occurred during a tax period in which the entity that makes a sale or other transfer received an exemption under Tax Code, §151.3182.

(i) [~~(g)~~] Combined reporting.

(1) A credit under this section for qualified research expenses incurred by a member of a combined group must be claimed on the combined report for the group required by Tax Code, §171.1014[~~(Combined Reporting; Affiliated Group Engaged in Unitary Business)~~].

(2) Each member of a combined group determines its credit under this section as if it were an individual taxable entity. The total credits of each member of the combined group shall be added together to determine the total credit claimed on the combined report.

(3) Each member of a combined group is entitled to that portion of the carryforward of the credit under subsection (l) of this section in proportion to the amount of the credit created by each member's qualified research. Each member of a combined group remains entitled to its portion of the carryforward even if the member changes combined groups for any reason.

(4) The higher education rate described by subsection (g)(3) and (4) of this section applies to each member of a combined group separately and not to the combined group as a whole.

(5) The combined group is the taxable entity for purposes of claiming the credit. Eligibility for and the amount of the credit is determined by each member as if it were an individual taxable entity [~~this section~~].

(j) [~~(h)~~] Tiered partnership reporting.

(1) An upper tier entity and a lower tier entity may claim a credit under this section for qualified research expenses; however, an upper tier entity and a lower tier entity cannot claim a credit under this section for the same qualified research expense.

(2) An upper tier entity that includes the total revenue of a lower tier entity for purposes of computing its taxable margin as authorized by Tax Code, §171.1015 (Reporting for Certain Partnerships in Tiered Partnership Arrangement) may claim the credit under this section for qualified research expenses incurred by the lower tier entity to the extent of the upper tier entity's ownership interest in the lower tier entity.

(k) [~~(i)~~] Limitation. The total credit claimed under this section for a report, including the amount of any carryforward credit under subsection (l) [~~(j)~~] of this section, may not exceed 50% of the amount of franchise tax due for the report before any other applicable tax credits.

(l) [~~(j)~~] Carryforward.

(1) If a taxable entity is eligible for a credit that exceeds the limitation under subsection (k) [~~(i)~~] of this section, the taxable entity may carry the unused credit forward for not more than 20 consecutive reports.

(2) Research and development credits [~~Credits~~], including credit carryforwards, are considered to be used in the following order:

(A) a credit carryforward of unused research and development credits accrued under Tax Code, Chapter 171, Subchapter O (Tax Credit for Certain Research and Development Activities), before its repeal on January 1, 2008, and claimed as authorized by §3.593 of this title (relating to Margin: Franchise Tax Credits);

(B) a credit carryforward under this section; and

(C) a current year credit.

(3) If a taxable entity claims a carryforward on a report within the statute of limitations, the comptroller may verify that the credit that established the carryforward was based on qualified research activities, even if the statute of limitations for the year in which the credit was created has expired. This verification will not result in an adjustment to tax, penalty, or interest for any report year for which the statute of limitations has expired. The verification may result in an adjustment to the carryforward for all periods within the unexpired statute of limitations and for all future periods in which the taxable entity may claim the carryforward.

(m) [~~(k)~~] Assignment prohibited. A taxable entity may not convey, assign, or transfer the credit allowed under this section to another entity unless all of the assets of the taxable entity are conveyed, assigned, or transferred in the same transaction.

(n) [~~(l)~~] Application for credit.

(1) [~~A taxable entity must apply for a credit under this section.~~]A taxable entity applies for the credit by claiming the credit on or with the franchise tax report for the period for which the credit is claimed. A [~~To apply for a credit, a~~] taxable entity must also complete Form 05-178, Texas Franchise Tax Research and Development Activities Credits Schedule, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form.

(2) The comptroller may require a taxable entity that claims a credit under this section to provide all data and information required for the comptroller to evaluate the credit and to comply with Tax Code, §151.3182(c).

(o) [~~(m)~~] Amending reports.

(1) If a report was originally due and filed after the effective date of this section and a credit allowed under this section was not claimed, a taxable entity may file an amended report within the statute of limitation to claim a credit, if the taxable entity or a member of its combined group does not have an active Registration Number for that period. See §3.584 of this title for information about filing an amended report.

(2) If a taxable entity or member of the combined group has or had a Registration Number for a period for which it intends to claim a credit allowed under this section, the taxable entity or member of the combined group must submit a written request to cancel the registration before claiming a credit. The written request must contain [~~with~~]the following information:

(A) the tax period(s) covered by the report for which it intends to claim a credit allowed under this section; and

(B) a statement whether any tax-exempt purchases were made. If tax-exempt purchases were made, include an original or amended sales and use tax report with tax due, penalty, and interest for the sales tax periods that cover the tax-exempt purchases.

(3) If a report was filed claiming a credit allowed under this section and the taxable entity later decides to claim a sales and use tax exemption under Tax Code §151.3182, the taxable entity must:

(A) file an amended franchise tax report that does not claim the credit under this section and pay any tax, penalty, and interest due;

(B) apply for a Registration Number; and

(C) file a request for a sales and use tax refund for taxes paid on purchases under Tax Code, §151.3182.

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 April 5, 2021.

TRD-202101422
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: May 16, 2021
For further information, please call: (512) 475-0387

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.15

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Chapter 18. Specifically, the Commission adopts amendments to §18.15, regarding Additional Fine. The amendments are adopted without changes to the proposed text as published in the February 5, 2021, issue of the *Texas Register* (46 TexReg 897). This rule will not be republished.

For a filer to be subject to the additional penalty, *two* conditions must be met: (1) the filer must fail to file a required report within 30 days of the deadline, and (2) the filer must fail to pay the statutory penalty within 10 days of receiving a warning letter from the Commission. See Texas Election Code §254.042(b) (campaign finance); Tex. Gov't Code §305.033(b) (lobby); Tex. Gov't Code §572.033(b) (personal financial statement). If both of those conditions are met, then the filer is liable for an additional civil penalty "in an amount determined by commission rule...."

No public comments were received on these amended rules.

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

The amended rules affect Title 15 of the Election 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.

Filed with the Office of the Secretary of State on March 31, 2021.

TRD-202101402
J.R. Johnson
General Counsel
Texas Ethics Commission
Effective date: April 20, 2021
Proposal publication date: February 5, 2021
For further information, please call: (512) 463-5800

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER F. REPORTING REQUIREMENT FOR A GENERAL PURPOSE COMMITTEE

1 TAC §20.434

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Subchapter F of Chapter 20. Specifically, the Commission adopts amendments to §20.434, regarding Alternate Reporting Requirements for General-Purpose Committees. The amendments are adopted without changes to the proposed text as published in the February 5, 2021, issue of the *Texas Register* (46 TexReg 898) and will not be republished.

The Commission needs to correct some outdated cross-references in §20.434. Specifically, §20.434 references §20.433(a)(11) and §20.433(a)(20)(B), but those references have been out of date since 2012, when §20.433 was amended. To reflect those 2012 changes, the cross-references in §20.434 have been amended to §20.433(11) and §20.433(25)(B).

No public comments were received on this amended rule.

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

The amended rule affects Title 15 of the Election 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.

Filed with the Office of the Secretary of State on March 31, 2021.

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J.R. Johnson
General Counsel
Texas Ethics Commission
Effective date: April 20, 2021
Proposal publication date: February 5, 2021
For further information, please call: (512) 463-5800

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

1 TAC §353.1320, §353.1322

The Texas Health and Human Services Commission (HHSC) adopts new §353.1320, concerning Directed Payment Program for Behavioral Health Services; and new §353.1322, concerning Quality Metrics for the Directed Payment Program for Behavioral Health Services.

New §353.1320 and §353.1322 are adopted with changes to the proposed text as published in the January 29, 2021, issue of the *Texas Register* (46 TexReg 684). These rules will be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the new rules is to describe the circumstances under which HHSC will direct a Medicaid managed care organization (MCO) to provide a uniform percentage rate increase and a uniform dollar increase in the form of prospective monthly payments to community mental health centers (CMHCs) in the MCO's network in a participating service delivery area (SDA) for the provision of services by CMHCs. The new rules also describe the methodology used by HHSC to determine the amounts of the rate and dollar increases.

HHSC is encouraging CMHCs to earn certification as Certified Community Behavioral Health Clinics (CCBHC) to implement processes and delivery of care that are consistent with the CCBHC model. Currently, Medicaid payments to CMHCs that are either CCBHC entities or in the process of getting certified, made through either the fee-for-service (FFS) or managed care models, may not cover all costs of Medicaid allowable services provided by CMHCs. HHSC is adopting these rules to establish a new program developed under the Delivery System Reform Incentive Payment program (DSRIP) Transition Plan.

HHSC anticipates that the increased payments to participating CMHCs will sustain access to services, promote better health outcomes, and increase focus on improving quality goals that are established as part of the Texas Medicaid program.

In May 2016, the Centers for Medicare and Medicaid Services (CMS) finalized a rule that allows a state to direct expenditures under its contract with MCOs under certain limited circumstances. Under the federal rule, a state may direct an MCO to raise rates for a class of providers of a particular service by a uniform dollar amount or percentage, or as a performance incentive, subject to approval of the contract arrangements by CMS. To obtain approval, the arrangements must be based on the utilization and delivery of services; direct expenditures equally, and using the same terms of performance, for a class of providers of a particular service; advance at least one of the goals and objectives of the state's Medicaid quality strategy and have an evaluation plan to measure the effectiveness of the arrangements at doing so; not condition provider participation on an intergovernmental transfer (IGT); and not be automatically renewed.

These rules authorize HHSC to use IGTs from sponsoring governmental entities to support MCO capitation payment increases in one or more SDAs. Each MCO within the SDA will be contractually required by the state to increase payments by a uniform percentage and dollar amount for the applicable component, respectively, for one or more classes of CMHCs that provide services within the SDA.

Conceptual Framework

Eligibility:

HHSC determines eligibility for payments by CMHC class. The SDA must have at least one sponsoring governmental entity willing to provide IGT to support increased payments. Also, to be eligible for the reimbursement increase, a CMHC must be within a class designated by HHSC to receive the increase.

There will be two classes of CMHCs: CMHCs that have attained certification as a CCBHC and those that have not. The classifications allow HHSC to direct reimbursement increases where they align with the quality goals of the program. The reimbursement increase will be uniform for all CMHCs within each class.

Services subject to rate or dollar increase:

HHSC may direct rate increases for all or a subset of services provided by CMHCs. The services subject to the rate increase will focus on CCBHC procedure codes in an effort to advance the goals and objectives of HHSC's managed care quality strategy and continue best practices identified in DSRIP.

Determination of rate and dollar increase:

HHSC will consider several factors in determining the percentage rate increase that will be directed for one or both classes of CMHCs within an SDA, including the amount of available funding; the class or classes of CMHCs eligible to receive the increase; the type of service subject to the increase; budget neutrality; and the actuarial soundness of the capitation payment needed to support the increase.

Reconciliation and recoupment:

HHSC will follow the methodology described in Title 1 of the Texas Administrative Code (TAC), §353.1301 to reconcile the amount of non-federal funds expended under this section and to authorize recoupments of overpayment or disallowance amounts.

COMMENTS

The 15-day comment period ended February 13, 2021.

During this period, HHSC received comments regarding the proposed rules from 15 entities, including Amerigroup, Bluebonnet Trails Community Services, Bell County Indigent Care Program, Child and Family Guidance Center, CHI St. Luke's Health, Colleen Horton- Medical Care Advisory Committee, Emergence Health Network, Hamilton Healthcare System, North Texas Behavioral Health Authority, Palms Behavioral Health, Southern Area Behavioral Healthcare Services, Texas Association of Health Plans, Texas Council of Community Centers, Universal Health Services, and University of Texas Medical Branch. A summary of the comments received and HHSC's responses follows.

Definitions:

Comment: One commenter recommended minor changes to the definition of a CMHC to more closely align with current statutory and contractual requirements for CMHCs, terminology used by the behavioral health community, and terminology used elsewhere in the Texas Administrative Code.

Response: HHSC agrees with some, but not all, of this commenter's recommended changes to the definition of a CMHC §353.1320(4). HHSC made the changes that aligned the definition with the definition of CMHC services as specified in 42 U.S.C. § 300x-2(c)(1).

Data sources for historical units of service:

Comment: One commenter indicated that the term "encounter" is defined at §353.2(35) as "A covered service or group of covered services delivered by a provider to a member during a visit between the member and provider. This also includes value-added services." The commenter indicated that this definition relies on the word "visit," which could be interpreted as in-person only. They recommended a broad interpretation of an encounter (or visit) to include all authorized modes of service delivery.

Response: HHSC disagrees with the comment. The rule refers to "encounter data," defined in the Uniform Managed Care Contract (UMCC) as "a representation of a claim received and adjudicated by an MCO without alteration or omission." The rule is not referring to an encounter as defined in §353.2(35). No changes were made in response to this comment.

Directed Payment Program for Behavioral Health Services (DPP BHS) eligibility and application process:

Comment: One commenter asked if an entity that is not yet a CMHC could participate in the DPP BHS.

Response: Only CMHCs may participate in the DPP BHS. A CMHC is defined in §353.1320(b)(4) as an entity that is established under Texas Health and Safety Code §534.0015 and that: (A) Provides outpatient services, including specialized outpatient services for children, the elderly, individuals with serious mental illness, and residents of its mental health service area who have been discharged from inpatient treatment at a mental health facility; (B) Provides 24-hour-a-day emergency care services; (C) Provides day treatment or other partial hospitalization services, or psychosocial rehabilitation services; and (D) Provides screening for patients being considered for admission to state mental health facilities to determine the appropriateness of such admission. No changes were made in response to this comment.

Comment: One commenter asked if a hospital-based behavioral health clinic that is not a CMHC could participate in the DPP BHS.

Response: Only CMHCs may participate in the DPP BHS. A CMHC is defined in §353.1320(b)(4) as an entity that is established under Texas Health and Safety Code §534.0015 and that: (A) Provides outpatient services, including specialized outpatient services for children, the elderly, individuals with serious mental illness, and residents of its mental health service area who have been discharged from inpatient treatment at a mental health facility; (B) Provides 24-hour-a-day emergency care services; (C) Provides day treatment or other partial hospitalization services, or psychosocial rehabilitation services; and (D) Provides screening for patients being considered for admission to state mental health facilities to determine the appropriateness of such admission. No changes were made in response to this comment.

Comment: Several commenters requested that local behavioral health authorities (LBHAs), specifically the North Texas Behavioral Health Authority (NTBHA), be allowed to participate in DPP BHS. They argue that LBHAs provide the same state mandated mental health services as CMHCs and therefore it is unfair to exclude LBHAs that are not CMHCs from DPP BHS.

Response: DPP payments are administered through Medicaid managed care to advance quality objectives of the state's Medicaid Managed Care Quality Strategy. There are currently not any non-CMHC LBHAs that are in-network Medicaid managed care providers with claims history eligible for incorporation into the program or cost modeling. HHSC will consider amending the program rules in the future to incorporate LBHAs that are enrolled providers with Medicaid managed care organizations. No changes were made in response to this comment.

Comment: One commenter noted that outpatient services provided by CMHCs are eligible for the directed payments in the DPP BHS and requested that HHSC also provide directed payments to institutions for mental disease (IMDs) for the provision of outpatient services.

Response: Eligibility for DPP BHS is limited to CMHCs. Outpatient services provided by an IMD are eligible for increased reimbursement under the Comprehensive Hospital Increased Reimbursement Program (CHIRP), a directed payment program for hospitals. No changes were made in response to this comment.

Comment: One commenter requested clarification on the DPP BHS application process. Specifically, they asked how the application process for CMHCs that are already certified as CCBHCs will differ from the application process for CMHCs that are not certified as CCBHCs.

Response: The DPP BHS application process for all CMHCs will be the same. CMHCs will need to indicate the current status as a CCBHC or not. No changes were made in response to this comment.

Classes of participating CMHCs:

Comment: One commenter expressed concern that HHSC could be penalizing CMHCs that do not have the resources to become certified CCBHCs, thereby exacerbating disparities in the healthcare system by directing a higher uniform percentage rate increase or uniform dollar increase to CMHCs that are certified CCBHCs than to CMHCs that are not certified CCBHCs.

Response: DPP BHS is intended to incentivize CMHCs to earn and maintain their CCBHC certification. The five percent differential in the rate enhancement of the quality component of the program is intended to provide that incentive. HHSC has factored into the CCBHC cost-report financial modeling a projected cost growth of 10 percent for CMHCs that were not yet certified in state fiscal year 2019. In essence, the enhanced rate in DPP BHS for non-certified CMHCs already assumes the higher cost for the work toward meeting the certification requirements. HHSC believes that this balanced approach recognizes efforts of both types of CMHCs - those that have already achieved certification as a CCBHC and those that are still going through this process. No changes were made in response to this comment.

Distribution of DPP BHS payments:

Comment: One commenter asked how Component Two payments would be made to CMHCs. The commenter asked if the payments are claims-based, and if the amount of the enhancement to these payments calculated based on historical utilization will be paid out on actual utilization. The commenter also wanted to clarify if the actual utilization payment process would allow an individual CMHC to exceed the 35 percent available to it and if it would create a competition among CMHCs for the 35 percent of Component Two funding with the possibility that the overall 35 percent cap on Component Two can be exceeded.

Response: The total available funding is an estimated model based on historical utilization. The amount of Component Two payments will be paid out on actual utilization as MCOs adjudicate the claims; at this time there is no cap. CMS expects there to be an element of risk in a DPP; the premiums to Medicaid MCOs also reflect this risk by including a risk margin, in addition to other administrative and tax costs. It is assumed that

MCOs would continue to manage utilization, and any variation in utilization would be limited. In addition, HHSC will be monitoring service utilization to determine if additional program adjustments are needed, such as the inclusion of a cap on a specific component. No changes were made in response to this comment.

Comment: One commenter asked if the rate enhancements for Component Two are contingent upon a CMHC meeting all required metrics such that there is an all-or-none requirement associated with the enhanced rate payments.

Response: The measures and reporting requirements including performance requirements will be addressed annually through the public hearing referenced in §353.1322(e). No changes were made in response to this comment.

Comment: One commenter asked if the enhanced value for each allowed service is calculated so that it is the same percentage increase for every CMHC and the same for each allowed service.

Response: Component One provides a uniform dollar increase per historical unit of service for each CMHC enrolled in the program. Component Two is a uniform percentage increase for each of the top 15 CCBHC procedure codes. The percentage increase is the same per service within the provider class. No changes were made in response to this comment

Comment: One commenter asked HHSC to discontinue the practice of using the MCO's claims system as an intermediary pass-through system. According to the commenter, IGT dollars are provided to MCOs' capitation merely to pass-through payments to providers and MCOs should not be a fiduciary intermediary in funding providers. The commenter said maintaining the integrity of a claims system is paramount to avoid downstream confusions. The commenter asked HHSC to replicate the Quality Incentive Payment Program (QIPP) in a similar way for DPP BHS. In QIPP, upon completion, HHSC notifies the MCOs of the eligible incentive payment for the applicable providers and the funds provided are completely autonomous of the MCO's claims system.

Response: HHSC believes that state-directed payments that are used to advance a goal or objective in the state's quality strategy are appropriate and compliant with federal regulations and that such programs are in the best interest of the Medicaid managed care beneficiaries that receive services from the providers receiving these uniform rate increases. MCO capitation rates contemplate the administrative resources required to implement changes in relationship to state-directed payments. No changes were made in response to this comment

Non-federal share of program payments:

Comment: One commenter requested confirmation that the statement in §353.1320(j) that "no state general revenue is available to support the Directed Payment Program for Behavioral Health Services" means that no state general revenue that is not otherwise available to CMHCs is available to support DPP BHS. The commenter indicated they anticipate CMHCs will have authority to use allocated state general revenue as IGT for DPP BHS, as they do today in the DSRIP program, and requested that HHSC make any conforming changes to the rule necessary to ensure CMHCs are able to use allocated state general revenue as IGT for DPP BHS.

Response: The provision "no state general revenue is available to support the Directed Payment Program for Behavioral Health Services" means that no state general revenue is appropriated to HHSC specifically for this program. CMHCs may use permissible public funds, including state general revenue that may be received by CMHCs, as IGT for DPP BHS. HHSC has modified §353.1320(j) to make this clarification.

Comment: One commenter recommended that HHSC revise §353.1320(j)(3) to reflect that required IGT amounts will include only the non-federal share of all costs associated with the CMHC rate increase, including costs associated with MCO (Capitation) premium taxes, risk margin, and administration, plus 10 percent.

Response: HHSC agrees with this comment and has modified §353.1320(j)(3) to reflect that required IGT amounts will include only the non-federal share of these costs.

Comment: One commenter requested clarification regarding the 10 percent component of IGT amounts specified in §353.1320(j)(3). The commenter asked what the purpose of collecting the additional 10 percent is and how the 10 percent is calculated. For example, is it 10 percent of all costs associated with the CMHC rate increase or 10 percent of a subset of the items listed in §353.1320(j)(3)? The commenter expressed concern this expectation will diminish a CMHC's ability to deliver on outcomes required in DPP BHS.

Response: The 10 percent is collected by HHSC as the amount above the estimated total IGT needed to support the program. Directed-payment programs are operated by committing to a monthly per member per month increase to MCOs and the actual amount of the program can vary from estimates, if actual caseloads experienced deviate from the forecasted amount. The additional IGT collected is maintained as a buffer in the event that caseloads exceed expectations and may be returned to the unit of local governments in accordance with the reconciliation process described in §353.1301. No changes were made in response to this comment.

Quality metrics:

Comment: One commenter recommended aligning DPP BHS measures with current MCO and Alternative Payment Model (APM) measures to avoid further confusing or frustrating providers. The commenter also recommended aligning DPP BHS measures with the same P4Q measures that MCOs are financially at risk to achieve.

Response: The measures and reporting requirements including performance requirements will be addressed annually through the public hearing referenced in §353.1322(e). No changes were made in response to this comment.

Comment: One commenter requested that HHSC consider removing metrics that MCOs use to manage APM requirements from those MCOs' contracts in order to prevent a provider from being paid twice for the same metrics. The commenter indicated that this is a structural issue around the current UMCC.

Response: The measures and reporting requirements including performance requirements will be addressed annually through the public hearing referenced in §353.1322(e). No changes were made in response to this comment.

MCOs:

Comment: One commenter requested clarification on: 1) the timing of when HHSC will provide the MCOs with the payment calculations for the prospective monthly payments to the CMHCs; 2) the impact of any reconciliation on MCOs; 3) how HHSC will communicate the different classes to the MCOs; 4) the type of data and reporting required by HHSC and how HHSC and the MCOs will exchange data; 5) how HHSC will work with

the MCOs, understanding the various claims systems, and the time it may take to make required claims system modifications; 6) expectations related to agreements with providers and how these arrangements will impact existing provider contracts; and 7) if and how HHSC will work with the Texas Department of Insurance to waive the risk-based capital requirements on these funds, given the MCOs lack control over the expenditure of these funds and will likely be required to track them as separate and distinct funds.

Response: HHSC has established a workgroup with representatives from MCOs and will address these operational questions through the workgroup process. No changes were made in response to this comment.

General:

Comment: One commenter indicated they strongly support DPP BHS.

Response: HHSC appreciates the commenter's support. No changes were made in response to this comment.

Comment: One commenter indicated they appreciate the proposed rule recognizes that current Medicaid payments to CMHCs may not cover all costs of comprehensive, CCBHC services. That said, their experience tells them the "may not cover" reference in the preamble could, with confidence, be changed to, "do not cover" all costs of CCBHC services.

Response: HHSC declines to make the suggested change.

Comment: One commenter asked if a CMS extension of the enhanced Federal Medical Assistance Percentage (FMAP) by six percent would apply to the CMHCs participating in the first year of DPP BHS.

Response: The enhanced FMAP will apply to DPP BHS until the last day of the calendar quarter in which the last day of the public health emergency occurs. No changes were made in response to this comment.

Comment: One commenter asked how DPP BHS might affect providers' work with MCOs to establish alternative payment models and whether DPP BHS might delay this work.

Response: Under the rule, HHSC will direct an MCO in a participating SDA to increase the rate that it would otherwise pay a CMHC for providing certain services. HHSC does not believe the rule precludes the parties contracting to use an alternative payment model for the services subject to the rate increase, as long as payment to the CMHC for the subject services is increased by the designated percentage. However, because it is a uniform rate increase to what would otherwise be paid for the subject services, the MCO and CMHC may not develop an alternative payment model that is applied only to the increase in the capitation payment to the MCO. In other words, the alternative payment model must apply to the complete payment for the service, not just to the portion of the payment added under this rule.

No changes were made to the rule in response to this comment. However, HHSC welcomes continued dialogue with MCOs and CMHCs to gain insight into the impact of DPP BHS on efforts to develop alternative payment models. HHSC will consider amending the rule in the future if necessary to facilitate alternative payment models.

Comment: One commenter asked if there "is a program in place that is being looked into for uninsured patient care OUTSIDE of the Community Provider Program."

Response: This does not appear to be a comment on the proposed rules, and it is unclear what sort of program for uninsured patient care the commenter is asking about. However, directed payment programs such as DPP BHS only apply to Medicaid managed care. No changes were made to the rules in response to this comment.

Comment: One commenter asked how they could incorporate this program into jail health if possible.

Response: This does not appear to be a comment on the proposed rules, and it is unclear what the commenter means regarding "jail health." No changes were made to the rules in response to this comment.

HHSC made minor grammatical edits to §353.1320(c)(2), §353.1320(f)(2)(D), and §353.1322(e)(1)(A). HHSC also renumbered §353.1320(b)(5) to §353.1320(b)(6), and §353.1320(b)(6) to §353.1320(b)(8).

HHSC made minor editorial changes to §353.1320(a) by adding the program abbreviation DPP BHS; to §353.1320(e)(1) by updating the final enrollment period from "at least nine days prior to IGT notification" to "at least nine days prior to the release of suggested IGT responsibilities"; to §353.1320(i)(1)(A) by changing "provider" to "CMHC"; to §353.1320(j) and §353.1320(j)(1) by replacing "program" with "DPP BHS"; to §353.1320(j)(1) by changing "share" to "communicate"; to §353.1320(j)(2)(A) by changing "wishes" to "intends"; to §353.1320(j)(4) by updating "HHSC Provider Finance webpage" to "its Internet website"; to §353.1320(l) by adding "Provider Finance Department" after "HHSC"; to §353.1322(d)(3) by replacing "Achievement will be" with "CMHCs must" and adding "quality metric achievement"; and to §353.1322(e)(1) by inserting "quality" before "metrics" and deleting "of the calendar year that".

HHSC made editorial changes to §353.1320(b) to include definitions for the terms "intergovernmental transfer (IGT) notification" and "suggested IGT responsibility". HHSC added new §353.1320(d)(6) to specify that only certain encounter data will be used in calculating DPP BHS payments. Encounter data used to calculate DPP BHS payments must be designated as paid status with a reported paid amount greater than zero. Encounters reported as paid status, but with a reported paid amount of zero or negative dollars, will be excluded from the data used to calculate DPP BHS payments so that the calculations will not be inappropriately skewed. HHSC amended §353.1320(e)(2) to specify that no part of any DPP BHS payment will be used to pay a contingent fee, nor may the entity's agreement with the CMHC use a reimbursement methodology that contains any type of incentive, directly or indirectly, for inappropriately inflating, in any way, claims billed to the Medicaid program including the CMHC's receipt of DPP BHS funds, and the certification must be received by HHSC with the enrollment application. Also, as HHSC does not wish to impose significant administrative burdens or to infringe upon third parties' relationships to which no governmental entity is a party, HHSC amended §353.1320(e)(3) to make the requirement to submit copies of contracts with third parties to HHSC specific to instances where a change of ownership has occurred that would impact the CMHC's eligibility for DPP BHS.

HHSC also made editorial changes to §353.1320(j)(1) by deleting "plus estimated utilization for eligible and enrolled within the same SDA" and "The purpose of sharing this information is to provide CMHCs with information they can use to determine the amount of IGT they wish to transfer"; to §353.1320(j)(2)

and §353.1320(j)(4) by changing "CMHCs" to "sponsoring governmental entities"; to §353.1320(j)(2) by changing "15 business days" to "21 business days" to ensure CMHCs have adequate time to prepare for the semi-annual IGT transfer; and to §353.1320(j)(3) by adding language that HHSC will issue an IGT notification to specify the date that IGT is requested to be transferred no fewer than 14 business days before IGT transfers are due to ensure CMHCs have adequate time to prepare for the semi-annual IGT transfer; to §353.1322(c)(1) by replacing "pay-for-reporting (P4R)" with "improvement over self (IOS)" and changing "pay for performance (P4P)" to "benchmark"; to §353.1322(d)(2)(A) by updating "The achievement of a structure measure is tested on whether a CMHC meets the established requirement" to "To achieve a structure measure a CMHC must report its progress on associated activities for each measurement period"; to §353.1322(d)(2)(B) by replacing P4R with an IOS or benchmark measure and deleting "is based on reporting data for a specified measurement period"; and to §353.1322(d)(2)(C) by deleting "The achievement of a P4P measure is based on meeting" and adding "a target percentage" and "In year one of the program, achievement of an IOS measure will be establishing a baseline".

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code, Chapter 32; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

§353.1320. Directed Payment Program for Behavioral Health Services.

(a) Introduction. This section establishes the Directed Payment Program for Behavioral Health Services (DPP BHS). DPP BHS is designed to incentivize community mental health centers (CMHCs) to improve quality, access, and innovation in the provision of medical and behavioral health services to Medicaid recipients through the use of metrics that are expected to advance at least one of the goals and objectives of the state's managed care quality strategy.

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this section may be defined in §353.1301 of this subchapter (relating to General Provisions) or §353.1322 of this subchapter (relating to Quality Metrics for the Directed Payment Program for Behavioral Health Services).

(1) Average Commercial Reimbursement (ACR) gap--The difference between what an average commercial payor is estimated to pay for the services and what Medicaid actually paid for the same services.

(2) Certified community behavioral health clinic (CCBHC)--A clinic certified by the state in accordance with federal criteria and with the requirements of the Protecting Access to Medicare Act of 2014 (PAMA).

(3) CCBHC cost-reporting gap--The difference between what Medicaid pays for services and what the reimbursement would be based on the CCBHC cost-reporting methodology.

(4) Community mental health center (CMHC)--An entity that is established under Texas Health and Safety Code §534.0015 and that:

(A) Provides outpatient services, including specialized outpatient services for children, the elderly, individuals with serious mental illness, and residents of its mental health service area who have been discharged from inpatient treatment at a mental health facility.

(B) Provides 24-hour-a-day emergency care services.

(C) Provides day treatment or other partial hospitalization services, or psychosocial rehabilitation services.

(D) Provides screening for patients being considered for admission to state mental health facilities to determine the appropriateness of such admission.

(5) Intergovernmental transfer (IGT) notification--Notice and directions regarding how and when IGTs should be made in support of DPP BHS.

(6) Program period--A period of time for which the Texas Health and Human Services (HHSC) contracts with participating managed care organizations (MCOs) to pay increased capitation rates for the purpose of provider payments under this section. Each program period is equal to a state fiscal year beginning September 1 and ending August 31 of the following year. A CMHC that is unable to participate in the program described in this section beginning September 1 may apply to participate beginning March 1 of the program period and ending August 31. Participation during such a modified program period is subject to the application and intergovernmental-transfer (IGT) deadlines described in subsection (j) of this section.

(7) Suggested IGT responsibility--Notice of potential amounts that a sponsoring governmental entity may wish to consider transferring in support of DPP BHS.

(8) Total program value--The maximum amount available under the Directed Payment Program for Behavioral Health Services for a program period, as determined by HHSC.

(c) Classes of participating CMHCs.

(1) HHSC may direct the MCOs to provide a uniform percentage rate increase or a uniform dollar increase to all CMHCs within one or more of the following classes of CMHCs with which the MCO contracts for services:

(A) CMHCs that are certified CCBHCs; and

(B) CMHCs that are not certified CCBHCs.

(2) If HHSC directs rate or dollar increases to more than one class of CMHCs within the service delivery area (SDA), the rate or dollar increases directed by HHSC may vary between classes.

(d) Data sources for historical units of service. Historical units of service are used to determine the estimated distribution of program funds across eligible and enrolled CMHCs.

(1) HHSC will use encounter data and will identify encounters based upon the billing provider's national provider identification (NPI) number.

(2) The most recently available Medicaid encounter data for a complete state fiscal year will be used to determine the distribution of program funds across eligible and enrolled CMHCs.

(3) In the event that the historical data are not deemed appropriate for use by actuarial standards, HHSC may use data from a different state fiscal year at the discretion of the HHSC actuaries.

(4) The data used to estimate distribution of funds will align to the extent possible with the data used for purposes of setting the capitation rates for MCOs for the same period.

(5) HHSC will calculate the estimated rate that an average commercial payor or Medicare would have paid for similar services or based on the CMS approved CCBHC cost report rate methodology using either data from Medicare cost reports or collected from providers.

(6) Encounter data used to calculate DPP BHS payments must be designated as paid status with a reported paid amount greater than zero. Encounters reported as paid status, but with a reported paid amount of zero or negative dollars, will be excluded from the data used to calculate DPP BHS payments.

(e) Participation requirements. As a condition of participation, all CMHCs participating in the program must allow for the following.

(1) The CMHC must submit a properly completed enrollment application by the due date determined by HHSC. The enrollment period must be no less than 21 calendar days, and the final date of the enrollment period will be at least nine calendar days prior to the release of suggested IGT responsibilities.

(2) The entity that bills on behalf of the CMHC must certify, on a form prescribed by HHSC, that no part of any payment made under the program will be used to pay a contingent fee and that the entity's agreement with the CMHC does not use a reimbursement methodology that contains any type of incentive, directly or indirectly, for inappropriately inflating, in any way, claims billed to the Medicaid program, including the CMHC's receipt of program funds. The certification must be received by HHSC with the enrollment application described in paragraph (1) of this subsection.

(3) If a provider has changed ownership in the past five years in a way that impacts eligibility for DPP BHS, the provider must submit to HHSC, upon demand, copies of contracts it has with third parties with respect to the transfer of ownership or the management of the provider and which reference the administration of, or payment from, DPP BHS.

(f) Determination of percentage of rate and dollar increase.

(1) HHSC will determine the percentage of rate or dollar increase applicable to CMHC by program component.

(2) HHSC will consider the following factors when determining the rate increase:

(A) the estimated Medicare gap for CMHCs, based upon the upper payment limit demonstration most recently submitted by HHSC to the Centers for Medicare and Medicaid Services (CMS);

(B) the estimated Average Commercial Reimbursement (ACR) gap for the class or individual CMHCs, as indicated in data collected from CMHCs;

(C) the estimated gap for CMHCs, based on the CCBHC cost-reporting methodology that is consistent with the CMS guidelines;

(D) the percentage of Medicaid costs incurred by CMHCs in providing care to Medicaid managed care clients that are reimbursed by Medicaid MCOs prior to any rate increase administered under this section; and

(E) the actuarial soundness of the capitation payment needed to support the rate increase.

(g) Services subject to rate and dollar increase. HHSC may direct the MCOs to increase rates or dollar amounts for all or a subset of CMHC services.

(h) Program capitation rate components. Program funds will be paid to MCOs through two components of the managed care per member per month (PMPM) capitation rates. The MCOs' distribution of program funds to the enrolled CMHCs will be based on each CMHC's performance related to the quality metrics as described in §353.1322 of this subchapter. The CMHC must have provided at least one Medicaid service to a Medicaid client for each reporting period to be eligible for payments.

(1) Component One.

(A) The total value of Component One will be equal to 65 percent of total program value.

(B) Allocation of funds across all qualifying CMHCs will be proportional, based upon historical Medicaid utilization.

(C) Monthly payments to CMHCs will be triggered by achievement of requirements as described in §353.1322 of this subchapter.

(D) The interim allocation of funds across qualifying CMHCs will be reconciled to the actual Medicaid utilization across these CMHCs during the program period, as captured by Medicaid MCOs contracted with HHSC for managed care 180 days after the last day of the program period. This reconciliation will only be performed if the absolute values of percentage changes between each CMHC's proportion of historical Medicaid utilization and actual Medicaid utilization is greater than 10 percent.

(2) Component Two.

(A) The total value of Component Two will be equal to 35 percent of total program value.

(B) Allocation of funds across all qualifying CMHCs will be based upon historical Medicaid utilization.

(C) Payments to CMHCs will be triggered by achievement of performance requirements as described in §353.1322 of this subchapter.

(3) Non-disbursed funds. Funds that are non-disbursed due to failure of one or more CMHCs to meet performance requirements will be distributed across all qualifying CMHCs based on each CMHC's proportion of total earned program funds from Components One and Two combined at the end of the year.

(i) Distribution of the Directed Payment Program for Behavioral Health Services payments.

(1) Prior to the beginning of the program period, HHSC will calculate the portion of each payment associated with each enrolled CMHC broken down by program capitation rate component, quality metric, and payment period. For example, for a CMHC, HHSC will calculate the portion of each payment associated with that CMHC that would be paid from the MCO to the CMHC as follows.

(A) Monthly payments in the form of a uniform dollar increase for Component One will be equal to the total value of Component One attributed based upon historical utilization of the CMHC divided by twelve.

(B) Ongoing rate increases from Component Two will be paid as performance requirements are met and will be a uniform percentage rate increase on applicable services calculated based on the total value of Component Two for the CMHCs divided by historical utilization of the respective services.

(C) For purposes of the calculation described in subparagraph (B) of this paragraph, a CMHC must achieve a minimum

number of measures as identified in §353.1322 of this subchapter to be eligible for full payment.

(2) MCOs will distribute payments to enrolled CMHCs based on criteria established under paragraph (1) of this subsection.

(j) Non-federal share of DPP BHS payments. The non-federal share of all DPP BHS payments is funded through IGTs from sponsoring governmental entities. No state general revenue that is not otherwise available to CMHCs is available to support DPP BHS.

(1) HHSC will communicate suggested IGT responsibilities for the program period with all DPP BHS eligible and enrolled CMHCs at least 10 calendar days prior to the IGT declaration of intent deadline. Suggested IGT responsibilities will be based on the maximum dollars available under DPP BHS for the program period as determined by HHSC, plus 10 percent; forecasted member months for the program period as determined by HHSC; and the distribution of historical Medicaid utilization across CMHCs, for the program period. HHSC will also communicate estimated maximum revenues each eligible and enrolled CMHC could earn under DPP BHS for the program period with those estimates based on HHSC's suggested IGT responsibilities and an assumption that all enrolled CMHCs will meet 100 percent of their quality metrics.

(2) Sponsoring governmental entities will determine the amount of IGT they intend to transfer to HHSC for the entire program period and provide a declaration of intent to HHSC 21 business days before the first half of the IGT amount is transferred to HHSC.

(A) The declaration of intent is a form prescribed by HHSC that includes the total amount of IGT the sponsoring governmental entity intends to transfer to HHSC.

(B) The declaration of intent is certified to the best knowledge and belief of a person legally authorized to sign for the sponsoring governmental entity but does not bind the sponsoring governmental entity to transfer IGT.

(3) HHSC will issue an IGT notification to specify the date that IGT is requested to be transferred no fewer than 14 business days before IGT transfers are due. HHSC will instruct sponsoring governmental entities as to the IGT amounts necessary to fund the program at estimated levels. IGT amounts will include the non-federal share of all costs associated with the CMHC rate increase, including costs associated with MCO (Capitation) premium taxes, risk margin, and administration, plus 10 percent.

(4) Sponsoring governmental entities will transfer the first half of the IGT amount by a date determined by HHSC, but no later than June 1. Sponsoring governmental entities will transfer the second half of the IGT amount by a date determined by HHSC, but no later than December 1. HHSC will publish the IGT deadlines and all associated dates on its Internet website by March 15 of each year.

(k) Effective date of rate and dollar reimbursement increases. HHSC will direct MCOs to increase reimbursements under this section beginning the first day of the program period that includes the increased capitation rates paid by HHSC to each MCO pursuant to the contract between them.

(l) Changes in operation. If an enrolled CMHC closes voluntarily or ceases to provide Medicaid services, the CMHC must notify the HHSC Provider Finance Department by electronic mail to an address designated by HHSC, by hand delivery, United States (U.S.) mail, or special mail delivery within 10 business days of closing or ceasing to provide Medicaid services. Notification is considered to have occurred when HHSC Provider Finance Department receives the notice.

(m) Reconciliation. HHSC will reconcile the amount of the non-federal funds actually expended under this section during each program period with the amount of funds transferred to HHSC by the sponsoring governmental entities for that same period using the methodology described in §353.1301(g) of this subchapter and, as applicable, subsection (h)(1)(D) of this section.

(n) Recoupment. Payments under this section may be subject to recoupment as described in §353.1301(j) - (k) of this subchapter.

§353.1322. Quality Metrics for the Directed Payment Program for Behavioral Health Services.

(a) Introduction. This section establishes the quality metrics and required reporting that may be used in the Directed Payment Program for Behavioral Health Services.

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this section may be defined in §353.1301 (relating to General Provisions) or §353.1320 (relating to Directed Payment Program for Behavioral Health Services) of this subchapter.

(1) Baseline--An initial standard used as a comparison against performance in each metric throughout the program period to determine progress in the program's quality metrics.

(2) Benchmark--A metric-specific initial standard set prior to the start of the program period and used as a comparison against a community mental health center's (CMHC's) progress throughout the program period.

(3) Measurement period--The time period used to measure achievement of a quality metric.

(c) Quality metrics. For each program period, the Texas Health and Human Services Commission (HHSC) will designate quality metrics for each of the program's capitation rate components as described in §353.1320(h) of this subchapter.

(1) Each quality metric will be identified as a structure measure, improvement over self (IOS) measure, or benchmark measure.

(2) Each quality metric will be evidence-based and will be presented to the public for comment in accordance with subsection (e) of this section.

(d) Performance requirements. For each program period, HHSC will specify the performance requirement that will be associated with the designated quality metric that is expected to advance at least one of the goals and objectives in the Medicaid quality strategy. Achievement of performance requirements will trigger payments for the program's capitation rate components as described in §353.1320(h) and be used to evaluate the degree to which the arrangement advances at least one of the goals and objectives that are incentivized by the payments described under §353.1320(h) of this subchapter. For some quality metrics, achievement is tested merely on whether a CMHC meets or does not meet the established requirement. The following performance requirements are associated with the quality metrics described in subsection (c) of this section.

(1) Reporting of quality metrics. All quality metrics must be reported for the CMHC to be eligible for payment.

(2) Achievement of quality metrics.

(A) To achieve a structure measure, a CMHC must report its progress on associated activities for each measurement period.

(B) To achieve an IOS or benchmark measure, a CMHC must meet or exceed the measure's goal for a measurement period.

Goals will be established as either a target percentage improvement over self or performance above a benchmark as specified by the metric and determined by HHSC. In year one of the program, achievement of an IOS measure will be establishing a baseline.

(3) Reporting frequency. CMHCs must report quality metric achievement semi-annually, unless otherwise specified by the metric.

(4) Other metrics related to improving the quality of care for Texas Medicaid beneficiaries. If HHSC develops additional metrics for inclusion in the Directed Payment Program for Behavioral Health Services, the associated performance requirements will be presented to the public for comment in accordance with subsection (e) of this section.

(e) Notice and hearing.

(1) HHSC will publish notice of the proposed quality metrics and their associated performance requirements no later than January 31 preceding the first month of the program period. The notice must be published either by publication on HHSC's website or in the *Texas Register.* The notice required under this section will include the following:

(A) instructions for interested parties to submit written comments to HHSC regarding the proposed metrics and performance requirements; and

(B) the date, time, and location of a public hearing.

(2) Written comments will be accepted for 15 business days following publication. There will also be a public hearing within that 15-day period to allow interested persons to present comments on the proposed metrics and performance requirements.

(f) Publication of final metrics and performance requirements. Final quality metrics and performance requirements will be provided through HHSC's website on or before February 28 of the calendar year that also contains the first month of the program period. If the Centers for Medicare and Medicaid Services requires changes to quality metrics or performance requirements after February 28 of the calendar year but before the first month of the program period, HHSC will provide notice of the changes through HHSC's website.

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 April 1, 2021.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: January 29, 2021
For further information, please call: (512) 923-0644

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TITLE 34. PUBLIC FINANCE

PART 6. TEXAS MUNICIPAL RETIREMENT SYSTEM

CHAPTER 125. ACTIONS OF PARTICIPATING MUNICIPALITIES

The Board of Trustees (Board) of the Texas Municipal Retirement System (TMRS or the System) adopts the repeal of current 34 TAC Chapter 125 (Chapter 125) relating to actions of participating municipalities, as published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9387). The repeals will not be republished.

TMRS repeals the following rules: 34 TAC §125.1, Optional Vesting Must Include All Departments; 34 TAC §125.2, Composite Participating Date Requires Council Action; 34 TAC §125.3, Actuary Determines Contribution Rates; 34 TAC §125.4, Effect of Adopting Composite Participating Date; 34 TAC §125.5, When Composite Participating Date Must Be Adopted; 34 TAC §125.6, Limitations on Buy-Back Ordinances; 34 TAC §125.7, Optional Additional Contributions to Benefit Accumulation Fund.

The Board of TMRS adopts new Chapter 125, relating to actions of participating municipalities §§125.1 - 125.11, without changes to the proposed text as published in the December 25, 2020, of the *Texas Register* (45 TexReg 9389). These rules will not be republished. TMRS adopts the following rules: 34 TAC §125.1, Optional Vesting Must Include All Departments; 34 TAC §125.2, Composite Participating Date Requires Council Action; 34 TAC §125.3, Effect of Adopting Composite Participating Date; 34 TAC §125.4, When Composite Participating Date Must Be Adopted; 34 TAC §125.5, Limitations on Buy Back Ordinances; 34 TAC §125.6, Optional Additional Contributions to Benefit Accumulation Fund; 34 TAC §125.7, Elected Officials; 34 TAC §125.8, Collection of Contributions; 34 TAC §125.9, Correction of Errors; 34 TAC §125.10, Ordinances; 34 TAC §125.11, Use of City Portal System.

BACKGROUND AND PURPOSE

New Chapter 125 is adopted to update, modernize, and provide clarification to its rules relating to actions of participating municipalities under existing benefit plans of TMRS. Statutes specific to TMRS are found in Title 8, Subtitle G, Chapters 851 through 855, Texas Government Code (the "TMRS Act"). In addition, the repeal and replacement of Chapter 125 is adopted as a result of TMRS' rule review, which was conducted pursuant to Texas Government Code §2001.039.

Five new Chapter 125 rules in 34 TAC §125.1, Optional Vesting Must Include All Departments; 34 TAC §125.2, Composite Participating Date Requires Council Action; 34 TAC §125.3, Effect of Adopting Composite Participating Date; 34 TAC §125.4, When Composite Participating Date Must Be Adopted; and, 34 TAC §125.6, Optional Additional Contributions to Benefit Accumulation Fund have been renumbered but are otherwise unchanged from prior rules. One adopted rule for Chapter 125 (in 34 TAC §125.5, Limitations on Buy Back Ordinances) is amended to add one word for clarity. Substantive changes, however, are adopted in the form of five additional new rules, which are described as follows: clarify documentation that TMRS may request regarding the eligibility of elected officials to participate in the System pursuant to §852.107 of the TMRS Act (in §125.7); clarify duties under the TMRS Act (including, but not limited to, §855.402) regarding the collection and receipt of payroll reports and member and employer contributions, and provide for cities to submit electronic payments to TMRS, unless otherwise excepted by the proposed rule (in §125.8); clarify processing of error corrections regarding service credits, contributions and payments under applicable federal and state laws and Internal Revenue Service guidance (in §125.9); clarify deadlines for ordinances not otherwise specified in the TMRS Act and delegate to the TMRS Executive Director authority to approve ordinances regarding certain bene-

fits, Cost of Living Adjustments and Updated Service Credits (in §125.10); and, clarify terms and conditions under which participating cities may use the System's electronic city portal system (in §125.11).

Current rule §125.3, Actuary Determines Contribution Rates, is being repealed as it is no longer necessary for the administration of the System.

No comments were received regarding the adoption of the repeal and new Chapter 125.

34 TAC §§125.1 - 125.7

STATUTORY AUTHORITY

The repeal of existing Chapter 125 is adopted under the following provisions of the TMRS Act or the Texas Government Code: (i) Government Code §855.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of the System; and, Government Code §2001.039 which grants the Board the authority to review and repeal rules after assessment of whether the reasons for initially adopting the rule continue to exist.

CROSS-REFERENCE TO STATUTES

Texas Government Code: §§802.1024, 802.1025, 852.005, 852.107, 853.003, 853.403, 854.203, 855.402, and 855.403.

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 April 5, 2021.

TRD-202101417
Christine M. Sweeney
Chief Legal Officer
Texas Municipal Retirement System
Effective date: April 25, 2021
Proposal publication date: December 25, 2020
For further information, please call: (512) 225-3710

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34 TAC §§125.1 - 125.11

The new Chapter 125 rules are adopted pursuant to the authority granted under the following provisions of the TMRS Act or the Texas Government Code: (i) Government Code §855.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of the System; and, (ii) Government Code §855.201, which allows the Board to delegate to the executive director powers and duties provided to the Board by the TMRS Act. In addition, the rule changes are adopted as a result of TMRS' rule review, which was conducted pursuant to Texas Government Code §2001.039.

CROSS-REFERENCE TO STATUTES

Texas Government Code: §§802.1024, 802.1025, 852.005, 852.107, 853.003, 853.403, 854.203, 855.402, and 855.403.

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 April 5, 2021.

TRD-202101418
Christine M. Sweeney
Chief Legal Officer
Texas Municipal Retirement System
Effective date: April 25, 2021
Proposal publication date: December 25, 2020
For further information, please call: (512) 225-3710

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REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this Notice of Intent to Review to consider for readoption, revision, or repeal the chapters listed below, in their entirety, contained in Title 16, Part 4, of the Texas Administrative Code. This review is being conducted in accordance with Texas Government Code §2001.039.

Education and Examination

Chapter 59, Continuing Education Requirements

Procedural

Chapter 60, Procedural Rules of the Commission and the Department

Building and Mechanical

Chapter 70, Industrialized Housing and Buildings

Chapter 73, Electricians

Business and Consumer Safety

Chapter 72, Professional Employer Organization

During the review, the Department will assess whether the reasons for adopting or readopting the rules in these chapters continue to exist. The Department will review each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current Department procedures. This review is required every four years.

Written comments regarding the review of these chapters may be submitted electronically on the Department's website at *https://ga.tdlr.texas.gov:1443/form/gcerules* (select the appropriate chapter name for your comment); by facsimile to (512) 475-3032; or by mail to Vanessa Vasquez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register.*

Any proposed changes to the rules in these chapters as a result of the rule review will be published in the Proposed Rules section of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption or repeal by the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202101426
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Filed: April 5, 2021

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Texas Department of Public Safety

Title 37, Part 1

Pursuant to Government Code, §2001.039, the Texas Department of Public Safety (the department) files this notice of intent to review and consider for readoption, amendment, or repeal the following chapters in Title 37 of the Texas Administrative Code: Chapter 4 (Commercial Vehicle Regulations and Enforcement Procedures); Chapter 6 (License to Carry Handguns); Chapter 7 (Texas Division of Emergency Management); Chapter 13 (Controlled Substances); Chapter 28 (DNA, CODIS, Forensic Analysis and Crime Laboratories); and Chapter 34 (Negotiation and Mediation of Certain Contract Disputes).

The department will determine whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. Any changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register.*

Comments relating to this rule review will be accepted for a 30-day period following publication of this notice in the *Texas Register.* Comments should be directed to: Susan Estringel, Office of General Counsel, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0140.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

TRD-202101406
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Filed: April 1, 2021

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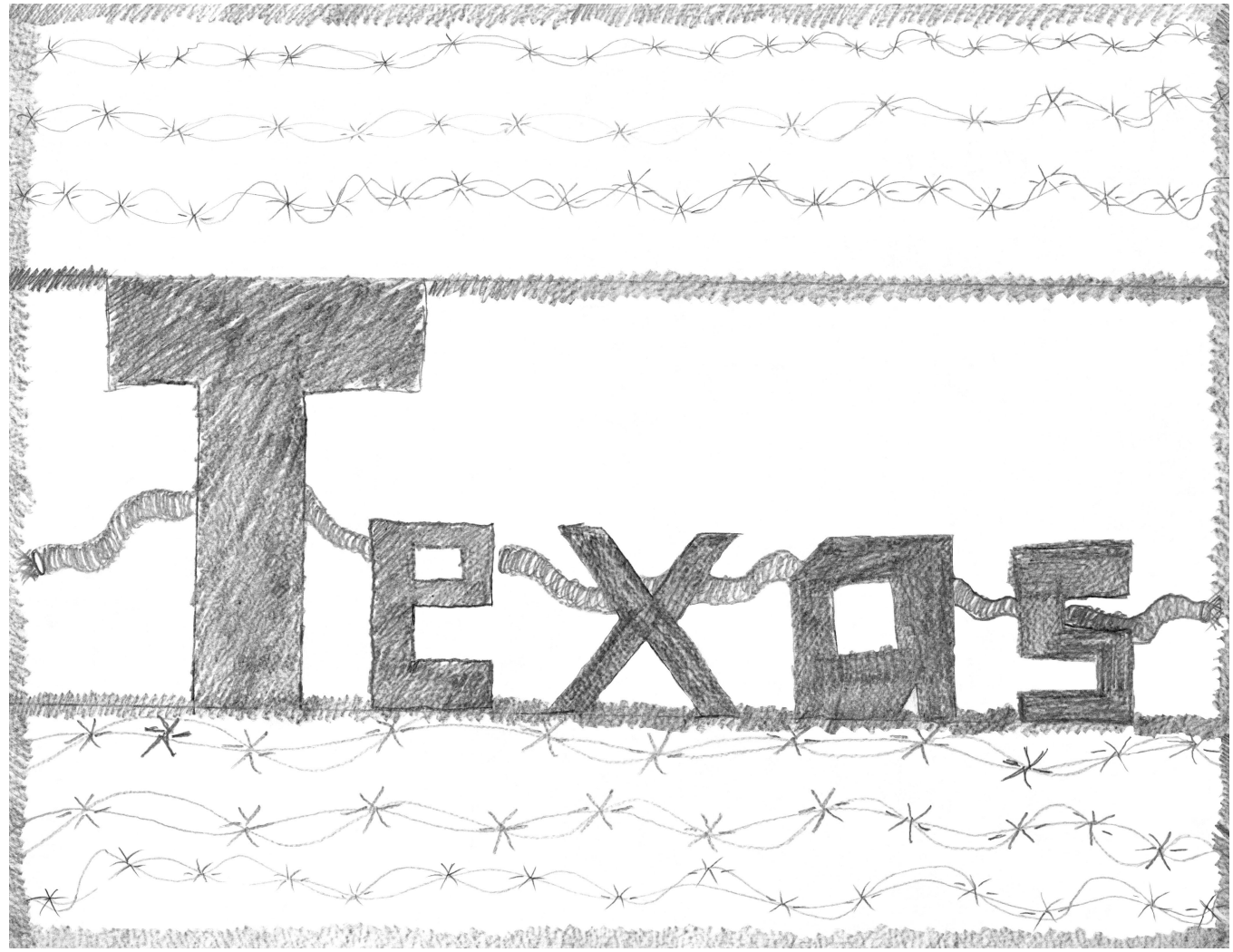
TEXAS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §18.25(c)

~~**Report Type I Levels Chart**~~

~~**(For All Reports Other Than Critical Reports)**~~

LEVEL	# OF PRIORS IN LAST 5 YEARS	CATEGORY A	CATEGORY B	CATEGORY C	EXPLANATORY NOTE
1	0	Waiver	Waiver	Waiver	
1.5	1	$150	$100	$50	Level 2 violation with good cause shown*
2	1	$300	$200	$100	
2.5	2	$400	$300	$150	Level 3 violation with good cause shown*
3	2	$500	$500	$250	

*The categorization shifts one-half level (from Level 2 to 1.5; from Level 3 to 2.5) if the filer's explanation qualifies as good cause under section 18.24(c) [~~(d)~~]) of this title.

Figure: 1 TAC §18.26(c)(1)

~~**Report Type II Formulas Chart**~~
~~**(For Critical Reports under section 18.26(d))**~~]

Category A

NO GOOD CAUSE	**EXPLANATORY NOTES**
Starting Penalty[~~Fine~~] = $500	1st day late
+ $100 a day, up to $1,000	2nd – 11th days late
+ $500 for every full 30 days thereafter, up to $10,000	12th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
GOOD CAUSE SHOWN	**EXPLANATORY NOTES**
Starting Penalty[~~Fine~~]= $150 (0 priors); or Starting Penalty[~~Fine~~]= $400 (1 or 2 priors)	1st day late
+ $100 a day, up to $1,000	2nd – 11th days late
+ $500 every full 30 days thereafter, up to $10,000	12th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

Figure: 1 TAC §18.26(c)(2)

Category B

NO GOOD CAUSE	**EXPLANATORY NOTES**
Starting Penalty[~~Fine~~]= $500	1st day late
+ $100 a day, up to $500	2nd – 6th days late
+ $250 every full 30 days thereafter, up to $5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
GOOD CAUSE SHOWN	**EXPLANATORY NOTES**
Starting Penalty[~~Fine~~]= $100 (0 priors); or Starting Penalty[~~Fine~~]= $300 (1 or 2 priors)	1st day late
+ $100 a day, up to $500	2nd – 6th days late
+ $250 every full 30 days thereafter, up to $5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

Figure: 1 TAC §18.26(c)(3)

Category C

NO GOOD CAUSE	**EXPLANATORY NOTES**
Starting Penalty[~~Fine~~]= $500	1st day late
+ $100 a day, up to $500	2nd – 6th days late
+ $250 every full 30 days thereafter, up to $5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
GOOD CAUSE SHOWN	**EXPLANATORY NOTES**
Starting Penalty[~~Fine~~]= $50 (0 priors); or Starting Penalty[~~Fine~~]= $150 (1 or 2 priors)	1st day late
+ $100 a day, up to $500	2nd – 6th days late
+ $250 every full 30 days thereafter, up to $5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Health and Safety Code and Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Michelle Tyson;* Cause No. D-1-GN-20-001538, in the 261st Judicial District Court, Travis County, Texas.

Background: Defendant owns the property located at 5407 Crew Avenue, Rochelle, McCulloh County, Texas ("the Site"), on which municipal solid waste ("MSW") has been accumulating since 2016. Specifically, metal sheeting, construction debris, scrap tires, plastic containers, and a trailer filled with household and miscellaneous waste were found on the Site without authorization, in violation of the Texas Solid Waste Disposal Act, the Texas Water Code, and rules promulgated thereunder by the Texas Commission on Environmental Quality ("TCEQ"). Defendant is also subject to an administrative order issued by the TCEQ in 2017. After the State filed suit in 2020, Defendant has started cleaning up the Site and disposing of the MSW at an authorized facility.

Proposed Settlement: The parties propose an Agreed Final Judgment and Permanent Injunction ("AFJ") which provides for an award to the State of $10,000 in civil penalties, $4,687 in attorney's fees, and $1,313 in unpaid administrative penalties. It also orders Defendant to cease disposing of MSW at the Site and completely dispose of all MSW at an authorized facility within 60 days.

For a complete description of the proposed settlement, the AFJ should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Logan Harrell, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911; email: Logan.Harrell@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202101470
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: April 7, 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 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/12/21 - 04/18/21 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/12/21 - 04/18/21 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and 303.009[3] for the period of 04/01/21 - 04/30/21 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and 303.009 for the period of 04/01/21 - 04/30/21 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-202101439
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 6, 2021

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Texas Education Agency

Request for Applications Concerning Competitive Authorization for Online Course and Professional Development Reviews

Filing Authority. This competitive selection process is authorized by the Texas Education Code (TEC), §§30A.104, 30A.105, 30A.111, 30A.112(a), and 30A.1121(b).

Description. The Texas Education Agency (TEA) is notifying eligible course review organizations that they may submit applications for the *Competitive Authorization Program for Online Course and Professional Development Reviews.* The *Competitive Authorization Program for Online Course and Professional Development Reviews* is intended to identify and appoint approved online course review organizations to provide comprehensive content and quality evaluations of online student courses and online professional development courses for the Texas Virtual School Network (TXVSN).

Eligible applicants include nonprofit organizations, institutions of higher education, private companies, Texas local educational agencies, and Texas regional education service centers that demonstrate the capacity to offer TXVSN online course reviews that meet the criteria specified in the program guidelines. For instance, applicants must demonstrate evidence of knowledge and experience in review processes with the Texas Essential Knowledge and Skills (TEKS), Texas content quality measures, national quality standards for online courses, and accessibility; experience in working on similar projects; and project understanding. Reviewers will evaluate applications based

on the overall quality and validity of the proposed programs and the extent to which the applications address the primary objectives and intent of the project.

The complete competitive authorization guidelines will be posted on the TEA Texas Virtual School Network web page at https://tea.texas.gov/academics/learning-support-and-programs/texas-virtual-school-network for viewing and downloading.

Applications must be submitted to DigitalLearning@tea.texas.gov. Applications must be received no later than 5:00 p.m. (Central Time), Friday, May 28, 2021, to be considered eligible for review.

TEA is not obligated to approve an application or endorse any application submitted in response to this competitive authorization. The issuance of this competitive authorization does not obligate TEA to pay any costs incurred in preparing a response.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to DigitalLearning@tea.texas.gov no later than Friday, May 7, 2021. All questions and the written answers thereto will be posted on the TEA Texas Virtual School Network web page in the format of Frequently Asked Questions (FAQs) by Friday, May 14, 2021.

Issued in Austin, Texas, on April 7, 2021.

TRD-202101473
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: April 7, 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 **May 17, 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 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 **May 17, 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: ALCAPA Real Estate Holdings, LLC; Teresa Albright; and Milton Shaw; DOCKET NUMBER: 2020-0731-WR-E; IDENTIFIER: RN110484680; LOCATION: Blanco, Blanco County; TYPE OF FACILITY: commercial property; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121, by failing to obtain authorization prior to diverting, impounding, storing, taking, or using state water; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(2) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2020-0347-AIR-E; IDENTIFIER: RN100825249; LOCATION: Sweeny, Brazoria County; TYPE OF FACILITY: manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review (NSR) Permit Numbers 22690 and PSDTX751M1, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O2151, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 25, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Numbers 103832 and N166M1, SC Number 1, FOP Number O3961, GTC and STC Number 11, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rate; and 30 TAC §116.115(c) and §122.143(4), NSR Permit Numbers 103832 and N166M1, SC Number 28.E, FOP Number O3961, GTC and STC Number 11, and THSC, §382.085(b), by failing to submit a copy of the final sampling report within 60 days after sampling is completed; PENALTY: $390,826; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $156,330; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: City of Breckenridge; DOCKET NUMBER: 2019-1753-MWD-E; IDENTIFIER: RN102844917; LOCATION: Breckenridge, Stephens County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010040001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $17,187; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $17,187; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: City of Dilley; DOCKET NUMBER: 2019-0382-MWD-E; IDENTIFIER: RN105156699; LOCATION: Dilley, Frio County; TYPE OF FACILITY: water treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010404006, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $4,875; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $3,900; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: City of Goodrich; DOCKET NUMBER: 2020-0125-MWD-E; IDENTIFIER: RN101917649; LOCATION: Goodrich, Polk County; TYPE OF FACILITY: wastewater treatment plant; RULES

VIOLATED: 30 TAC §217.63(c), by failing to provide the required telemetry system at the lift station; 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012711001, Sludge Provisions, Section IV, by failing to submit an accurate and complete annual sludge report; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0012711001, 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) and (5), §319.5(b), and TPDES Permit Number WQ0012711001, Effluent Limitations and Monitoring Requirements Number 1, by failing to collect and analyze effluent samples at the intervals specified in the permit; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0012711001, Monitoring and Reporting Requirements Number 7.c, by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of the noncompliance; 30 TAC §305.125(1) and (19) and TPDES Permit Number WQ0012711001, Permit Conditions Number 1.a, by failing to submit accurate and complete discharge monitoring reports; and 30 TAC §317.7(e), by failing to provide the required plant protection; PENALTY: $66,810; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: City of Harker Heights; DOCKET NUMBER: 2019-1254-MWD-E; IDENTIFIER: RN101920395; LOCATION: Harker Heights, Bell County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010155001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010155001, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of untreated wastewater into or adjacent to any water in the state; PENALTY: $26,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $26,625; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: City of La Feria; DOCKET NUMBER: 2019-0372-MLM-E; IDENTIFIER: RN101612646; LOCATION: La Feria, Cameron County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; and 30 TAC §330.7(a) and §330.15(a)(2) and (3) and (c) and TWC, §26.121(c), by failing to not cause, suffer, allow, or permit the unauthorized disposal, transportation, and storage of municipal solid waste; PENALTY: $12,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $10,000; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: City of Olney; DOCKET NUMBER: 2019-1805-MWD-E; IDENTIFIER: RN101610335; LOCATION: Olney, Young 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 WQ0010050001, Effluent Limitations and Monitoring Requirements Number 1, Outfall Number 001, by failing to comply with permitted effluent limitations; PENALTY: $29,062; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $29,062; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: City of Petrolia; DOCKET NUMBER: 2020-0355-MWD-E; IDENTIFIER: RN102096625; LOCATION: Petrolia, Clay County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §217.33(a) and §305.125(1) and TCEQ Permit Number WQ0010247001, Monitoring Requirements 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; 30 TAC §305.125(1) and TCEQ Permit Number WQ0010247001, Special Provisions Number 11, by failing to take representative soil samples from the root zones of the land application area receiving wastewater during the period of December 2018 - February 2019; and 30 TAC §305.125(1), TWC, §26.121(a)(1), and TCEQ Permit Number WQ0010247001, Effluent Limitations and Monitoring Requirements, Section A., by failing to comply with permitted effluent limitations; PENALTY: $3,850; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: City of Rose City; DOCKET NUMBER: 2019-1132-PWS-E; IDENTIFIER: RN102676269; LOCATION: Vidor, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.111(e)(1)(A) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to achieve a turbidity level of combined filter effluent (CFE) that is less than 1.0 nephelometric turbidity unit (NTU), 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 achieve a turbidity level of CFE that is less than 1.0 NTU; 30 TAC §290.111(e)(1)(B) and THSC, §341.0315(c), by failing to achieve a turbidity level of CFE that is less than 0.3 NTU in at least 95% of the samples tested in May 2019; and 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: $521; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: City of Sugar Land; DOCKET NUMBER: 2020-0139-MWD-E; IDENTIFIER: RN102097284; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013355001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 3, by failing to comply with permitted effluent limitations; PENALTY: $28,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $22,500; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: ClubCorp NV V, LLC dba Prestonwood Country Club; DOCKET NUMBER: 2020-1189-PST-E; IDENTIFIER: RN101444826; LOCATION: Plano, Denton County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Comal County Emergency Services District Number 6; DOCKET NUMBER: 2020-1191-EAQ-E; IDENTIFIER: RN111017877; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: fire department; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Water Pollution Abatement Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $15,438; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: HERLISCO INC dba MS Express; DOCKET NUMBER: 2020-1158-PST-E; IDENTIFIER: RN101893485; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with an underground storage tank (UST) system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $6,227; ENFORCEMENT COORDINATOR: Courtney Atkins, (512) 534-6862; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: Medina RVC, LLC dba Medina High Point Resort; DOCKET NUMBER: 2020-1225-PST-E; IDENTIFIER: RN104281241; LOCATION: Medina, Bandera County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the regulated USTs; and 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; PENALTY: $4,572; ENFORCEMENT COORDINATOR: Terrany Binford, (512) 567-3302; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: Petro-Chemical Transport, LLC; DOCKET NUMBER: 2020-0594-PST-E; IDENTIFIER: RN106456205; LOCATION: Carrollton, Dallas County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to obtain a valid, current TCEQ delivery certificate before depositing a regulated substance into a regulated underground storage tank; PENALTY: $1,773; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: PHILLIPS 66 COMPANY; DOCKET NUMBER: 2020-1106-AIR-E; IDENTIFIER: RN100221134; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: petroleum bulk stations and terminals facility; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Federal Operating Permit Number O639, General Terms and Conditions and Special Terms and Conditions Number 17, and Texas Health and Safety Code, §382.085(b), by failing to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance, and failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: $2,813; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $1,125; ENFORCEMENT COORDINATOR: Richard Garza, (512) 534-5859; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: SA FAIR, LLC dba Petro Pantry 22; DOCKET NUMBER: 2020-1224-PST-E; IDENTIFIER: RN102258993; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $4,625; ENFORCEMENT COORDINATOR: Terrany Binford, (512) 567-3302; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: SHEULI INVESTMENTS, INCORPORATED dba Four Corners Food Mart; DOCKET NUMBER: 2020-0453-PST-E; IDENTIFIER: RN101906329; LOCATION: Mount Enterprise, Rusk County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b) and §334.54(e)(5), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (UST); 30 TAC §334.7(d)(1)(A) and (B) and (3), by failing to notify the agency of any change or additional information regarding the UST within 30 days of the occurrence of the change or addition; 30 TAC §§334.49, 334.50, and 334.54(b)(2) and (3) and (c)(1), and TWC, §26.3475(a), (c)(1), and (d), by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, failing to adequately protect a temporarily out-of-service UST system from corrosion, and also, failing to monitor a temporarily out-of-service UST system for releases; and 30 TAC §334.606, by failing to maintain required Class A/B operator training certification documentation on-site and make it available upon request by agency personnel; PENALTY: $13,541; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: Syed Sajid; DOCKET NUMBER: 2019-0866-PST-E; IDENTIFIER: RN101545572; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(1)(B) and (3), by failing to notify the agency of any change or additional information regarding the underground storage tank (UST) system within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.49(c)(2)(C) and (4)(C) and §334.54(b)(3) and TWC, §26.3475(d), by failing to inspect the corrosion protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, and failing to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.54(b)(2) and (d)(2)(B), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, and failing to ensure that any residue from stored regulated substances which

remain in the temporarily out-of-service USTs did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator, Class A, Class B, and Class C, for the facility; PENALTY: $13,164; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Town of Van Horn; DOCKET NUMBER: 2020-0371-MWD-E; IDENTIFIER: RN103014999; LOCATION: Van Horn, Culberson 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 WQ0014241001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; PENALTY: $6,075; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $4,860; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-202101436
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: April 6, 2021

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Notice of District Petition

Notice issued April 1, 2021

TCEQ Internal Control No. D-01132021-009; CR Farms, LLC, a Texas limited liability company, (Petitioner) filed a petition with the Texas Commission on Environmental Quality (TCEQ) for the annexation of land into Liberty County Municipal Management District No. 1 (District) under Chapter 54 of the Texas Water Code and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to all the property in the proposed annexation area to be included in the District; (2) the proposed property annexation will contain approximately 535.647 acres located within Liberty County, Texas; and (3) all of the land within the proposed property annexation is within the extraterritorial jurisdiction of the City of Plum Grove, Texas (City). Additional information provided indicates that there is one lienholder, Capital Farm Credit, FLCA, on the property to be included in the proposed District and the aforementioned entity has consented to the petition. Pursuant to Texas Water Code Section (§) 54.016, the Petitioner petitioned the City for consent to include the Property into the District. Information provided indicates that the City did not consent to the inclusion of the land into the District's area. After the 90-day period passed without receiving the City's consent to the annexation, the Petitioner submitted a petition to the City requesting the City provide water, sanitary sewer, and firefighting services to the proposed annexation area. The 120-day period for reaching a mutually agreeable contract expired and the information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code § 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the proposed annexation area into the District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202101448
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 6, 2021

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Notice of District Petition

Notice issued April 1, 2021

TCEQ Internal Control No. D-02012021-004; Terri R. Nichols and Joan M. DeLeon (Petitioners) filed a petition for the creation of Decker Prairie Municipal Utility District (District) of Montgomery County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 68.673 acres located wholly within Montgomery County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial, and commercial purposes or provide adequate drainage for the District; (2) collect, transport, process, dispose of and control domestic, industrial, and commercial wastes; (3) gather, conduct, divert, abate, amend, and

control local storm water or other local harmful excesses of water; and (4) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created. This may include the purchase, construction, acquisition, provision, operation, maintenance, repair, improvement, extension, and development of a roadway system. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $17,000,000. However, the financial analysis in the application was based on an estimated $15,920,000 for water, wastewater, and drainage at the time of submittal.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202101451
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 6, 2021

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 17, 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 May 17, 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: Charles N. Wells, Trustee of RT Trust; DOCKET NUMBER: 2018-0963-MSW-E; TCEQ ID NUMBER: RN109412015; LOCATION: Wells Landing Subdivision near Onalaska, Polk County; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste (MSW) - specifically, approximately four cubic yards of MSW, including loose and bagged household waste, asphalt shingles, electronics, and a scrap tire were disposed of at the site; PENALTY: $1,125; STAFF ATTORNEY: Clayton Smith, Litigation, MC 175, (512) 239-6224; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: City of Odem; DOCKET NUMBER: 2019-0255-MWD-E; TCEQ ID NUMBER: RN104188594; LOCATION: southeast side of Odem, approximately 200 feet from the end of County Road 2221 and approximately 1.8 miles southeast of the intersection of U.S. Highway 77 and Farm-to-Market Road 631, San Patricio County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010237002, 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 - specifically, the surface of the water in the wet well at the facility's Lift Station contained approximately 45% coverage of grease and other floating debris; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010237002, 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 - specifically, the surface of the water in the wet well at Lift Station Number 1 contained 100% coverage of grease and other floating debris. Additionally, there was only one operational pump at Lift Station Numbers 1 and 2, the North Street Lift Station, the Front Street Lift Station, and the 210 Lift Station and only a portable pump at Lift Station Number 4; TWC, §26.121(a)(1), 30 TAC §305.125(1) and (5), and TPDES Permit Number WQ0010237002, Permit Conditions Number 2.g., by failing to prevent an unauthorized discharge

of sewage into or adjacent to any water in the state - specifically, on September 18, 2018, approximately 1,000 gallons of untreated wastewater discharged from Lift Station Number 2 at the intersection of County Road 1876 and County Road 2171 into a drainage ditch. Additionally, on September 18, 2018, untreated wastewater was observed discharging from a force main located near the intersection of U.S. Highway 77 and West Bullard Street into a drainage ditch known as Peter's Swale; 30 TAC §305.125(1) and (5) and 30 TAC §319.7(a) and (c), and TPDES Permit Number WQ0010237002, Monitoring and Reporting Requirements Number 3.c., by failing to properly record monitoring activities during effluent sampling - specifically, the time of the sample collection, the identity of the individual who collected the sample, and the time of analysis were not included on the monitoring activities records; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010237002, Operational Requirements Number 1, by failing to ensure the facility and all its systems of collection, treatment, and disposal are properly operated and maintained - specifically, respondent did not perform the recommended process control tests set forth in TCEQ Regulatory Guidance 002 Process Control Tests for Domestic Wastewater Treatment facilities, as the process control tests for the raw influent and aeration basin were not being performed and the 30-minute settleability test was not conducted regularly; 30 TAC §319.6 and §319.9(d), by failing to assure the quality of all measurements through the use of blanks, standards, duplicates, and spikes - specifically, respondent was not performing daily duplicates for dissolved oxygen and *Escherichia coli.* Also, the pH instrument was not calibrated with standards that bracket the values each day it was used; 30 TAC §305.125(1) and TPDES Permit Number WQ0010237002, Monitoring and Reporting Requirements Number 4, by failing to indicate an increased frequency of sampling on the self-reported discharge monitoring reports (DMRs) - specifically, records between September 2017 and August 2018 indicated pH was measured three to four times per month; however, the DMRs indicated a sampling frequency of once per month; 30 TAC §317.4(a)(8), by failing to test the reduced-pressure backflow assembly annually at the facility; and 30 TAC §305.125(1) and (5) and 30 TAC §319.11(c) and TPDES Permit Number WQ0010237002, Monitoring and Reporting Requirements Number 2.a., by failing to properly analyze effluent samples - specifically, respondent was not using a National Institute of Standards and Technology -traceable thermometer for the incubator; PENALTY: $59,532; Supplemental Environmental Project offset amount of $59,532 applied to City of Odem Lift Station Improvements Project; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: FGL GROUP, LLC dba Montgomery Manufacturing Co; DOCKET NUMBER: 2019-1649-IHW-E; TCEQ ID NUMBER: RN110795481; LOCATION: 120 Industrial Drive, Kennedale, Tarrant County; TYPE OF FACILITY: cleaning products manufacturing facility; RULES VIOLATED: 30 TAC §335.4, by causing, suffering, allowing, or permitting the unauthorized storage, processing, or disposal of Industrial Solid Waste - specifically, soil contaminated with an unknown blue liquid was observed at the site, in three areas located along the eastern exterior, along the southern exterior, and approximately five feet north of Building 120, totaling approximately ten square feet, in addition to two 55-gallon drums, one 5-gallon container, and approximately seven 50-pound cement bags containing excavated contaminated soil, with an approximate combined capacity of 0.394 cubic feet, that were stored at the site; and 30 TAC §§335.62, 335.503(a), 335.504, and 40 Code of Federal Regulations §262.11, by failing to conduct hazardous waste determinations and waste classifications - specifically, hazardous waste determinations and waste classifications were not conducted on soil contaminated with an unknown blue liquid at the site; PENALTY: $5,250; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Lazy River RV & Trailer Park, LLC; DOCKET NUMBER: 2020-0774-PWS-E; TCEQ ID NUMBER: RN111039566; LOCATION: 1000 Cardon Loop near Columbus, Colorado County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.033(a) and 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class D or higher license; and 30 TAC §290.46(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; PENALTY: $3,802; STAFF ATTORNEY: Judy Bohr, Litigation, MC 175, (512) 239-5807; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: MAALT, L.P.; DOCKET NUMBER: 2020-0365-AIR-E; TCEQ ID NUMBER: RN106474737; LOCATION: intersection of Farm-to-Market Road 794 and County Road 284, Gonzales County; TYPE OF FACILITY: oil well service bulk sand handling site; RULES VIOLATED: Texas Health and Safety Code, §382.085(b), 30 TAC §106.145(3), and Permit by Rule Registration Number 104630, by failing to water, treat with dust-suppressant chemicals, oil, or pave and clean all permanent in-plant roads and vehicle work areas to achieve maximum control of dust emissions; PENALTY: $1,188; STAFF ATTORNEY: Vas Manthos, Litigation, MC 175, (512) 239-0181; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: SAMACY, INC. dba Fernandes Food Mart; DOCKET NUMBER: 2019-1231-PST-E; TCEQ ID NUMBER: RN102856804; LOCATION: 6275 Griggs Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC §26.3475(c)(1), and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; and TWC §26.3475(a), and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system - specifically, respondent did not conduct the annual line leak detector and piping tightness tests for UST Number 2; PENALTY: $6,885; STAFF ATTORNEY: Ben Warms, Litigation, MC 175, (512) 239-5144; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202101434
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: April 6, 2021

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the pro-

posed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 17, 2021.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 17, 2021.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: HEDO CAR SHOP SERVICES INC; DOCKET NUMBER: 2019-1225-AIR-E; TCEQ ID NUMBER: RN100572775; LOCATION: 1220 Barranca Drive, Suite 1A, El Paso, El Paso County; TYPE OF FACILITY: auto refinishing and body shop; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; and THSC, §382.085(b) and 30 TAC §115.421(12), by causing, suffering, allowing, or permitting volatile organic compound emissions to exceed the coatings or solvents emissions limit as delivered to the application system; PENALTY: $2,625; STAFF ATTORNEY: Christopher Mullins, Litigation, MC 175, (512) 239-0141; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(2) COMPANY: IBJ International, Inc. dba Quick Stop Chevron; DOCKET NUMBER: 2019-0821-PST-E; TCEQ ID NUMBER: RN102235777; LOCATION: 4035 East Houston Street, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; PENALTY: $3,750; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202101435
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: April 6, 2021

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of IMMANUEL ENTERPRISE, INC. dba Fast Trac Food Mart: SOAH Docket No. 582-21-1790; TCEQ Docket No. 2020-0230-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - May 6, 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 November 5, 2020 concerning assessing administrative penalties against and requiring certain actions of IMMANUEL ENTERPRISE, INC. dba Fast Trac Food Mart, for violations in Dallas County, Texas, of: 30 Texas Administrative Code §§334.10(b)(1)(B), 334.50(b)(1)(A) and (b)(2), and 334.605(a) and (b), Texas Water Code §26.3475(a) and (c)(1), and TCEQ Agreed Order, Docket No. 2017-0585-PST-E, Ordering Provision Nos. 2.a., 2.b.i., 2.b.ii., and 2.c.

The hearing will allow IMMANUEL ENTERPRISE, INC. dba Fast Trac Food Mart, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford IMMANUEL ENTERPRISE, INC. dba Fast Trac Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of IMMANUEL ENTERPRISE, INC. dba Fast Trac Food Mart to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** IMMANUEL ENTERPRISE, INC. dba Fast Trac Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Roslyn Dubberstein, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *www.tceq.texas.gov/goto/efilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas 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,* 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: April 6, 2021

TRD-202101457
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 7, 2021

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Mashiana Corp. DBA Lovely Food Mart: SOAH Docket No. 582-21-1791; TCEQ Docket No. 2020-0903-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - April 29, 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 December 22, 2020 concerning assessing administrative penalties against and requiring certain actions of Mashiana Corp. dba Lovely Food Mart, for violations in Denton County, Texas, of: 30 Texas Administrative Code §334.77 and §334.78.

The hearing will allow Mashiana Corp. dba Lovely Food Mart, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Mashiana Corp. dba Lovely Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Mashiana Corp. dba Lovely Food Mart to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Mashiana Corp. dba Lovely Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code § 7.054 and chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Casey Kurnath, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas 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, 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: March 30, 2021

TRD-202101449
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 6, 2021

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Notice of Public Meeting for Air Quality Standard Permit for Concrete Batch Plants: Proposed Registration No. 164044

Application. Bell Concrete, Inc., has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 164044, which would authorize construction of a permanent concrete batch plant located on the southeast corner of the intersection of Loop 564 and County Road 2724, Mineola, Wood County, Texas 75773. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. *http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.638934&lng=-95.480054&zoom=13&type=r.* The

proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the administrative and technical reviews of the application and determined that the application meets all of the requirements of a standard permit authorized by 30 TAC § 116.611, which would establish the conditions under which the plant must operate. The executive director has made a preliminary decision to issue the registration because it meets all applicable rules.

Public Comment/Public Meeting. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, May 4, 2021 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: *https://www.gotomeeting.com/webinar/join-webinar* and entering Webinar ID 797-520-027. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (562) 247-8422 and enter access code 566-102-024.

Additional information will be available on the agency calendar of events at the following link: *https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.*

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at *https://www14.tceq.texas.gov/epic/eComment/.* If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov.www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

The application, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ central office, the TCEQ Tyler regional office, and at the Mineola Memorial Library, 301 North Pacific Street, Mineola, Wood County, Texas 75773. If the public viewing place at the library is not available, then the required documents can be viewed online at *https://tinyurl.com/3jygp6od.* The facility's compliance file, if any exists, is available for public review at the TCEQ Tyler Regional Office, 2916 Teague Drive, Tyler, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit. Further information may also be obtained from Bell Concrete, Inc., 625 7th Street, Sulphur Springs, Texas 75482-2066 or by calling Ms. Melissa Fitts, Vice President of Westward Environmental, Inc. at (830) 249-8284.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: April 02, 2021

TRD-202101412
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 5, 2021

Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment: Proposed Limited Scope Amendment to Permit No. 1898

Application. U.S. Department of the Army, US Highway 82 West, Texarkana, in Bowie County, Texas, 75505-9101, a former military installation, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize revisions to the final closure plan to improve various aspects of the final cover system and to yield a more constructible design, revisions to the groundwater sampling and analysis plan, revisions to the landfill gas monitoring plan, and replacement of the final permit closure drawings. The facility is located at the address listed above. The TCEQ received this application on December 11, 2020. The permit application is available for viewing and copying at the Texarkana Public Library, 600 West 3rd Street, Texarkana, Bowie County, Texas 75501, and may be viewed online at https://dcsg9.army.mil/BRAC/. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://arcg.is/0C4vHr. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at *www.tceq.texas.gov/goto/cid.* Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at *www14.tceq.texas.gov/epic/eComment/* or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at *www.tceq.texas.gov/goto/pep.* Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from U.S. Department of the Army at the address stated above or by calling Mr. John Medlock III, Commander's Representative at (903) 255-2857.

TRD-202101452
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 7, 2021

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Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment: Proposed Permit No. 207B

Application. The City of Del Rio, 114 W. Martin Street, Del Rio, Val Verde County, Texas 78840, a Type I Landfill, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize a vertical expansion of the landfill. The facility is located at 1897 Railway Ave., Del Rio, Val Verde County, Texas 78840. The TCEQ received this application on December 22, 2020. The permit application is available for viewing and copying at the Del Rio Public Works, 114 W. Martin St., Del Rio, Val Verde County, Texas 78840, and may be viewed online at https://www.cpypermits.com/. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://arcg.is/99y8T. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A

contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement [I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687- 4040.

Further information may also be obtained from the City of Del Rio at the address stated above or by calling Mr. Matt Wojnowski, City Manager at (830) 774-8525.

TRD-202101453

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 7, 2021

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Notice of Water Quality Application

The following notices were issued on March 11, 2021 thru April 1, 2021.

The following notices do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

East Texas Electric Cooperative, Inc., which operates the R.C. Thomas Hydroelectric Plant, has applied for a minor amendment, Texas Pollutant Discharge Elimination System Permit No. WQ0005262000, to remove the reference that the discharge is via an 8-inch pipe and to update the coordinates for Outfall 001. The draft permit authorizes the discharge of floor drain water on an intermittent and flow-variable rate not to exceed a daily maximum of 79,000 gallons per day via Outfall 001. The facility is located at 365 Recreational Road No. 5, southwest of the City of Livingston, in Polk County, Texas 77351.

Harris County Municipal Utility District No. 565, has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0015683001, to authorize a reduction of the flow limits authorized in the Interim I phase of the existing permit from 150,000 gallons per day to 100,000 gallons per day and in the Interim II phase of the existing permit from 300,000 gallons per day to 200,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The facility will be located approximately 3,090 feet northeast of the intersection of Bauer-Hockley Road and Becker Road, in Harris County, Texas 77447.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS OF THIS NOTICE PUBLISHED IN THE *TEXAS REGISTER*.

INFORMATION SECTION

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011845002, issued on November 13, 2020, to correct typographical errors in the daily average effluent limits for total phosphorus in the Interim III phase. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day. The facility is located at 15500 Sun Light Near Way, #B, in the City of Pflugerville, Travis County, Texas 78660.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202101454

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 7, 2021

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Notice of Water Rights Application

Notices Issued April 06, 2021

APPLICATION NO. 12805; Tarrant Regional Water District (TRWD), 800 E Northside Dr., Fort Worth, Texas 76102-1016, Applicant, requests a Water Use Permit to divert and use not to exceed 78,653 acre-feet of water per year for municipal, industrial, and agricultural purposes for use in TRWD's service area in the Trinity River Basin. TRWD also requests authorization to use the bed and banks of the Clear Fork Trinity River, and the West Fork Trinity River to convey water from Lake Benbrook to TRWD's customers. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on January 13, 2012. Additional information and fees were received on December 10, 2012, August 19, September 4 and November 7, 2013. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on February 20, 2014.

The Executive Director has completed the technical review of the application and prepared a draft Water Use Permit. The draft permit, if granted, would contain special conditions including, but not limited to, streamflow restrictions and maintenance of an accounting plan. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: *www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice.* Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the TCEQ will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at *https://www14.tceq.texas.gov/epic/eComment/* by entering WRPERM 12805 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at *www.tceq.texas.gov.* Si desea información en español, puede llamar al (800) 687-4040 o por el internet al *http://www.tceq.texas.gov.*

APPLICATION NO. 12806; Tarrant Regional Water District (TRWD), 800 E Northside Dr., Fort Worth, Texas 76102-1016, Applicant, requests a Water Use Permit to divert and use not to exceed 63,899 acre-feet of water per year for municipal, industrial, and agricultural purposes for use in TRWD's service area in the Trinity River Basin. TRWD also requests authorization to use the bed and banks of the West Fork Trinity River to convey water for subsequent diversion at diversion rates and points authorized in Certificate of Adjudication No. 08-3809. More information on the application and how to participate in the permitting process is given below. The application and fees were received on January 13, 2012. Additional information and fees were received on December 10, 2012, August 19, September 4 and November 7, 2013. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on February 20, 2014.

The Executive Director has completed the technical review of the application and prepared a draft Water Use Permit. The draft permit, if granted, would contain special conditions including, but not limited to, streamflow restrictions and maintenance of an accounting plan. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: *www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice.* Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at *https://www14.tceq.texas.gov/epic/eComment/* by entering WRPERM 12806 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at *www.tceq.texas.gov.* Si desea información en español, puede llamar al (800) 687-4040 o por el internet al *http://www.tceq.texas.gov.*

APPLICATION NO. 13233; Tarrant Regional Water District (TRWD), 800 E Northside Dr., Fort Worth, Texas 76102-1016, Applicant, requests a Water Use Permit to divert and use not to exceed 84,978 acre-feet of water per year for municipal, industrial, and agricultural purposes for use in TRWD's service area in the Trinity River Basin. TRWD requests authorization to divert water at diversion points and at diversion rates authorized in TRWD's Certificate of Adjudication No. 08-4976, as amended. More information on the application and how to participate in the permitting process is given below. The application and fees were received on October 26, 2015. Additional information and fees were received on September 1, 2016 and the application was declared administratively complete on October 3, 2016. The application was amended to increase the requested appropriation, and additional information and fees were received on January 7, 2019. The application amendment was declared administratively complete and filed with the Office of the Chief Clerk on March 21, 2019.

The Executive Director has completed the technical review of the application and prepared a draft Water Use Permit. The draft permit, if granted, would contain special conditions including, but not limited to, streamflow restrictions and maintenance of an accounting plan. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: *www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice.* Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at *https://www14.tceq.texas.gov/epic/eComment/* by entering WRPERM 13233 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at *www.tceq.texas.gov.* Si desea información en español, puede llamar al (800) 687-4040 o por el internet al *http://www.tceq.texas.gov.*

APPLICATION NO. 13234; Tarrant Regional Water District (TRWD), 800 E Northside Dr., Fort Worth, Texas 76102-1016, Applicant, requests a Water Use Permit to divert and use not to exceed 94,500 acre-feet of water per year for municipal, industrial, and agricultural purposes for use in TRWD's service area in the Trinity River Basin. TRWD requests authorization to divert water at diversion points and at diversion rates and points authorized in TRWD's Certificate of Adjudication No. 08-5035, as amended. More information on the application and how to participate in the permitting process is given below. The application and fees were received on October 26, 2015. Additional information and fees were received on September 1, 2016 and the application was declared administratively complete on October 3, 2016. The application was amended, and additional information and fees were received on January 7, 2019. The application amendment was declared administratively complete and filed with the Office of the Chief Clerk on March 21, 2019.

The Executive Director has completed the technical review of the application and prepared a draft Water Use Permit. The draft permit, if granted, would contain special conditions including, but not limited to, streamflow restrictions and maintenance of an accounting plan. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: *www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice.* Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common

to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at *https://www14.tceq.texas.gov/epic/eComment/* by entering WRPERM 13234 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at *www.tceq.texas.gov.* Si desea información en español, puede llamar al (800) 687-4040 o por el internet al *http://www.tceq.texas.gov.*

TRD-202101450
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 6, 2021

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Request for Nominations - Municipal Solid Waste Management and Resource Recovery Advisory Council

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for ten individuals to serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council (Advisory Council) to fill the following positions: (1) an elected official from a county with any population size (appointment to expire on 8/31/2023); (2) an elected official from a municipality with a population of 750,000 or more (appointment to expire on 8/31/2023); (3) an elected official from a municipality with a population between 25,000 and 100,000 (appointment to expire on 8/31/2025); (4) a representative of the general public (appointment to expire on 8/31/2025); (5) a representative from a private environmental conservation organization (appointment to expire on 8/31/2027); (6) a professional engineer from a private engineering firm with experience in the design and management of solid waste facilities (appointment to expire on 8/31/2027); (7) a registered waste tire processor (appointment to expire on 8/31/2027); (8) a representative from a planning region (appointment to expire on 8/31/2027); (9) a solid waste professional with experience managing or operating a commercial solid waste landfill (appointment to expire on 8/31/2027); and (10) an elected official from a county with a population less than 150,000 (appointment to expire on 8/31/2027).

The Advisory Council was created by the 68th Texas Legislature in 1983 and is comprised of 18 members who serve staggered six-year terms. The composition of the Advisory Council is prescribed in the Texas Health and Safety Code, §363.041.

The Advisory Council reviews and evaluates the effect of state policies and programs on municipal solid waste (MSW) management; makes recommendations on matters relating to MSW management; recommends legislation to encourage the efficient management of MSW; recommends policies for the use, allocation, or distribution of the planning fund; and recommends special studies and projects to further the effectiveness of MSW management and recovery for Texas. The Advisory Council is required by law to conduct at least one meeting every three months. The meetings are held in Austin and may span several hours. Members are expected to attend the scheduled meetings and participate in subcommittees if requested.

To apply for or to nominate an individual for an Advisory Council position, please complete and submit the Advisory Council Application and related materials. The application and additional information are available at: *www.tceq.texas.gov/goto/msw/council/.*

Nominee evaluations will be made based upon the application, materials submitted, letters of reference, and solid waste management experience. Appointments will be made by the TCEQ commissioners in the fall of 2021.

The Advisory Council Application and materials must be e-mailed or postmarked by 5:00 p.m., June 1, 2021. For regular mail please send to: Anju Chalise, MC-126, TCEQ, Waste Permits Division, P.O. Box 13087, Austin, Texas 78711-3087. If submitting by overnight mail, please send to: Anju Chalise, Building F, TCEQ, Waste Permits Division, 12100 Park 35 Circle, Austin, Texas 78753. Questions regarding the Advisory Council can be directed to Anju Chalise at (512) 239-1529 or e-mailed to: *mswper@tceq.texas.gov.*

TRD-202101423
Robert Martinez
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 5, 2021

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 22, 2021 to April 2, 2021. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office website. The notice was published on the website on Friday, April 9, 2021. The public comment period for this project will close at 5:00 p.m. on Sunday, May 9, 2021.

FEDERAL AGENCY ACTIONS:

Applicant: Laguna Harbor, LLC

Location: The project site is located adjacent to the Gulf Intracoastal Waterway (GIWW), at approximately 5 miles north of the City of Galveston, within Galveston County, Texas.

Latitude & Longitude (NAD 83): 29.386455, -94.765791

Project Description: The applicant proposes to amend a previously authorized project to construct two 150-foot breakwaters along the western entrance of the project site and two 50- to 75-foot breakwaters along the eastern entrance to the project site. The proposed construction activities include the installation of steel sheet pilings/walers

in open water with concrete riprap for toe protections. Any gaps between the land/water interface will be filled with submerged riprap per request from Texas Parks and Wildlife (TPWD). The applicant also proposes to plant Spartina alterniflora behind the proposed breakwaters (previously planned to place 0.36 acres of fill on the tidal flats and open water areas adjacent to the west entrance canal and adjacent to the GIWW which has now been removed from the project scope).

After construction of the breakwaters, the applicant proposes to mechanically dredge via land and barge (previously hydraulic and mechanical) the marina area to -10 feet Mean Low Tide (MLT) and remove approximately 29,667 (previously 50,000) cubic yards of material. The applicant proposes to place this material on adjacent upland sites surrounded by earthen berms and reinforced fabric silt fences with a 20-foot vegetation buffer until the dredge dries and can be spread within the placement area (previously planned to dispose onsite and offsite disposal areas). The material will be seeded once dry.

The applicant also proposes to install a new, 136-slip, transient marina facility which will include a community building with a restroom, laundry, shower facilities, walkways and finger piers, fuel dock, onsite security, dockside utilities, and protected water basin for transient boaters. This project will establish a waypoint destination along the GIWW for the purpose of increasing transient boat traffic to the Bolivar Peninsula.

The applicant will also relocate oysters from the existing rock riprap area where the breakwater extensions are to be constructed and has applied for and received a TPWD Aquatic Introduction Permit (AIP).

Type of Application: U.S. Army Corps of Engineers permit application #SWG-2003-00921. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 21-1246-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at *pialegal@glo.texas.gov.* Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at *federal.consistency@glo.texas.gov.*

TRD-202101472
Mark A. Havens
Chief Clerk
General Land Office
Filed: April 7, 2021

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Official Notice to Vessel Owner/Operator

(Pursuant to §40.254, Tex. Nat. Res. Code)

PRELIMINARY REPORT

Authority

This preliminary report and notice of violation was issued by the Deputy Director, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on March 31, 2021.

Facts

Based on an investigation conducted by Texas General Land Office-Region 2 staff on March 26, 2021, the Commissioner of the General Land Office (GLO), has determined that a 41' sailboat identified as **GLO Vessel Tracking Number 2-85133** is in a wrecked, derelict and substantially dismantled condition without the consent of the commissioner. The vessel is located in Baytown aground along ExxonMobil shoreline in Harris County, Texas.

The GLO determined that pursuant to OSPRA §40.254(b)(2)(B), that the vessel does have intrinsic value. The GLO has also determined that, because of the vessel's location and condition, the vessel poses a THREAT TO THE ENVIRONMENT/THREAT TO PUBLIC HEATH, SAFETY, OR WELFARE.

Violation

YOU ARE HEREBY GIVEN NOTICE, pursuant to the provisions of §40.254 of the Texas Natural Resources Code, (OSPRA) that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or threatened unauthorized discharge of oil; a threat to the public health, safety, and welfare; a threat to the environment; or a navigational hazard. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Deputy Director has determined who the person responsible for abandoning this vessel (GLO Tracking Number 2-85133) is and recommends that the Commissioner order the abandoned vessel be disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, Texas 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the GLO. If the GLO removes and disposes of the vessel, the GLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator. For additional information contact our office at (512) 463-2613.

Rev. 08/20

TRD-202101476
Mark A. Havens
Chief Clerk
General Land Office
Filed: April 7, 2021

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Texas Health and Human Services Commission

Correction of Error

The Health and Human Services Commission (HHSC) published the adoption of new rules, amendments to existing rules, and repeals of existing rules in the April 9, 2021, issue of the *Texas Register.* The adopted rulemaking consisted of the following:

Title 26, Part 1, Chapter **744, new and amended:** 744.201, 744.203, 744.205, 744.207, 744.305, 744.307, 744.309, 744.311, 744.701, 744.801, 744.2575, and 744.2577.

Title 26, Part 1, Chapter **745, new and amended:** 745.11, 745.21, 745.101, 745.115, 745.117, 745.119, 745.125, 745.127, 745.129, 745.131, 745.135, 745.141, 745.143, 745.211, 745.215, 745.241,

745.243, 745.249, 745.251, 745.253, 745.255, 745.273, 745.275, 745.301, 745.321, 745.323, 745.325, 745.339 - 745.341, 745.343 - 745.345, 745.347, 745.349, 745.351, 745.353, 745.355, 745.371, 745.373, 745.375, 745.379, 745.385, 745.403, 745.429, 745.431, 745.433, 745.435 - 745.437, 745.461, 745.464, 745.467, 745.471, 745.473, 745.475, 745.477, 745.478, 745.481, 745.483, 745.485, 745.487, 745.489, 745.8600, 745.8601, 745.8603, 745.8605, 745.8607, 745.8609, 745.8611, 745.8613, 745.8631, 745.8633, 745.8635, 745.8637, 745.8641, 745.8643, 745.8649 - 745.8657, 745.8659, 745.8661, 745.8681, 745.8683, 745.8685, 745.8687, 745.8711, 745.8713, and 745.8714

Title 26, Part 1, Chapter **745, repeal:** 745.253, 745.279, 745.301, 745.321, 745.343, 745.383, 745.407, 745.485, 745.8635, 745.8639, 745.8653, 745.8655, 745.8657, and 745.8683.

Title 26, Part 1, Chapter **746, new and amended:** 746.201, 746.203, 746.205, 746.207, 746.305, 746.307, 746.309, 746.311, 746.701, 746.801, 746.3605, and 746.3607,

Title 26, Part 1, Chapter **747, new and amended:** 747.207, 747.209, 747.211, 747.213, 747.303, 747.305, 747.307, 747.309, 747.701, 747.801, 747.3405, and 747.3407

Title 26, Part 1, Chapter 748,**new and amended:** 748.101, 748.151, 748.158 - 748.160, 748.303, 748.317, 748.319, and 748.1767

Title 26, Part 1, Chapter **749, new and amended:** 749.151, 749.155, 749.157, 749.159, 749.503, 749.517, 749.519, 749.1817, and 749.1821

Due to an error by HHSC, the adopted rulemakings were submitted with an incorrect effective date. The correct effective date for the adoptions is April 25, 2021.

TRD-202101447

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Texas Lottery Commission

Scratch Ticket Game Number 2306 "BREAK THE BANK SUPER TICKET™"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2306 is "BREAK THE BANK SUPER TICKET™". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2306 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2306.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 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, 61, 62, 63, 64, 65, $$ SYMBOL, $5.00, $10.00, $20.00, $30.00, $50.00, $100, $200, $500, $1,000, $20,000 and $250,000. The possible green Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 and 65. The possible blue Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 and 65.

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. 2306 - 1.2D

PLAY SYMBOL	CAPTION
01 (BLACK)	ONE (BLACK)
02 (BLACK)	TWO (BLACK)
03 (BLACK)	THR (BLACK)
04 (BLACK)	FOR (BLACK)
05 (BLACK)	FIV (BLACK)
06 (BLACK)	SIX (BLACK)
07 (BLACK)	SVN (BLACK)
08 (BLACK)	EGT (BLACK)
09 (BLACK)	NIN (BLACK)
10 (BLACK)	TEN (BLACK)
11(BLACK)	ELV (BLACK)
12 (BLACK)	TLV (BLACK)
13 (BLACK)	TRN (BLACK)
14 (BLACK)	FTN (BLACK)
15 (BLACK)	FFN (BLACK)
16 (BLACK)	SXN (BLACK)
17 (BLACK)	SVT (BLACK)
18 (BLACK)	ETN (BLACK)
19 (BLACK)	NTN (BLACK)
20 (BLACK)	TWY (BLACK)
21 (BLACK)	TWON (BLACK)
22 (BLACK)	TWTO (BLACK)
23 (BLACK)	TWTH (BLACK)
24 (BLACK)	TWFR (BLACK)
25 (BLACK)	TWFV (BLACK)
26 (BLACK)	TWSX (BLACK)
27 (BLACK)	TWSV (BLACK)
28 (BLACK)	TWET (BLACK)
29 (BLACK)	TWNI (BLACK)
30 (BLACK)	TRTY (BLACK)
31 (BLACK)	TRON (BLACK)
32 (BLACK)	TRTO (BLACK)
33 (BLACK)	TRTH (BLACK)
34 (BLACK)	TRFR (BLACK)
35 (BLACK)	TRFV (BLACK)
36 (BLACK)	TRSX (BLACK)
37 (BLACK)	TRSV (BLACK)

38 (BLACK)	TRET (BLACK)
39 (BLACK)	TRNI (BLACK)
40 (BLACK)	FRTY (BLACK)
41 (BLACK)	FRON (BLACK)
42 (BLACK)	FRTO (BLACK)
43 (BLACK)	FRTH (BLACK)
44 (BLACK)	FRFR (BLACK)
45 (BLACK)	FRFV (BLACK)
46 (BLACK)	FRSX (BLACK)
47 (BLACK)	FRSV (BLACK)
48 (BLACK)	FRET (BLACK)
49 (BLACK)	FRNI (BLACK)
50 (BLACK)	FFTY (BLACK)
51 (BLACK)	FFON (BLACK)
52 (BLACK)	FFTO (BLACK)
53 (BLACK)	FFTH (BLACK)
54 (BLACK)	FFFR (BLACK)
55 (BLACK)	FFFV (BLACK)
56 (BLACK)	FFSX (BLACK)
57 (BLACK)	FFSV (BLACK)
58 (BLACK)	FFET (BLACK)
59 (BLACK)	FFNI (BLACK)
60 (BLACK)	SXTY (BLACK)
61 (BLACK)	SXON (BLACK)
62 (BLACK)	SXTO (BLACK)
63 (BLACK)	SXTH (BLACK)
64 (BLACK)	SXFR (BLACK)
65 (BLACK)	SXFV (BLACK)
$$ SYMBOL (BLACK)	DBL (BLACK)
$5.00 (BLACK)	FIV$ (BLACK)
$10.00 (BLACK)	TEN$ (BLACK)
$20.00 (BLACK)	TWY$ (BLACK)
$30.00 (BLACK)	TRTY$ (BLACK)
$50.00 (BLACK)	FFTY$ (BLACK)
$100 (BLACK)	ONHN (BLACK)
$200 (BLACK)	TOHN (BLACK)
$500 (BLACK)	FVHN (BLACK)
$1,000 (BLACK)	ONTH (BLACK)
$20,000 (BLACK)	20TH (BLACK)
$250,000 (BLACK)	250TH (BLACK)

01 (GREEN)	ONE (GREEN)
02 (GREEN)	TWO (GREEN)
03 (GREEN)	THR (GREEN)
04 (GREEN)	FOR (GREEN)
05 (GREEN)	FIV (GREEN)
06 (GREEN)	SIX (GREEN)
07 (GREEN)	SVN (GREEN)
08 (GREEN)	EGT (GREEN)
09 (GREEN)	NIN (GREEN)
10 (GREEN)	TEN (GREEN)
11 (GREEN)	ELV (GREEN)
12 (GREEN)	TLV (GREEN)
13 (GREEN)	TRN (GREEN)
14 (GREEN)	FTN (GREEN)
15 (GREEN)	FFN (GREEN)
16 (GREEN)	SXN (GREEN)
17 (GREEN)	SVT (GREEN)
18 (GREEN)	ETN (GREEN)
19 (GREEN)	NTN (GREEN)
20 (GREEN)	TWY (GREEN)
21 (GREEN)	TWON (GREEN)
22 (GREEN)	TWTO (GREEN)
23 (GREEN)	TWTH (GREEN)
24 (GREEN)	TWFR (GREEN)
25 (GREEN)	TWFV (GREEN)
26 (GREEN)	TWSX (GREEN)
27 (GREEN)	TWSV (GREEN)
28 (GREEN)	TWET (GREEN)
29 (GREEN)	TWNI (GREEN)
30 (GREEN)	TRTY (GREEN)
31 (GREEN)	TRON (GREEN)
32 (GREEN)	TRTO (GREEN)
33 (GREEN)	TRTH (GREEN)
34 (GREEN)	TRFR (GREEN)
35 (GREEN)	TRFV (GREEN)
36 (GREEN)	TRSX (GREEN)
37 (GREEN)	TRSV (GREEN)
38 (GREEN)	TRET (GREEN)
39 (GREEN)	TRNI (GREEN)
40 (GREEN)	FRTY (GREEN)

41 (GREEN)	FRON (GREEN)
42 (GREEN)	FRTO (GREEN)
43 (GREEN)	FRTH (GREEN)
44 (GREEN)	FRFR (GREEN)
45 (GREEN)	FRFV (GREEN)
46 (GREEN)	FRSX (GREEN)
47 (GREEN)	FRSV (GREEN)
48 (GREEN)	FRET (GREEN)
49 (GREEN)	FRNI (GREEN)
50 (GREEN)	FFTY (GREEN)
51 (GREEN)	FFON (GREEN)
52 (GREEN)	FFTO (GREEN)
53 (GREEN)	FFTH (GREEN)
54 (GREEN)	FFFR (GREEN)
55 (GREEN)	FFFV (GREEN)
56 (GREEN)	FFSX (GREEN)
57 (GREEN)	FFSV (GREEN)
58 (GREEN)	FFET (GREEN)
59 (GREEN)	FFNI (GREEN)
60 (GREEN)	SXTY (GREEN)
61 (GREEN)	SXON (GREEN)
62 (GREEN)	SXTO (GREEN)
63 (GREEN)	SXTH (GREEN)
64 (GREEN)	SXFR (GREEN)
65 (GREEN)	SXFV (GREEN)
01 (BLUE)	ONE (BLUE)
02 (BLUE)	TWO (BLUE)
03 (BLUE)	THR (BLUE)
04 (BLUE)	FOR (BLUE)
05 (BLUE)	FIV (BLUE)
06 (BLUE)	SIX (BLUE)
07 (BLUE)	SVN (BLUE)
08 (BLUE)	EGT (BLUE)
09 (BLUE)	NIN (BLUE)
10 (BLUE)	TEN (BLUE)
11 (BLUE)	ELV (BLUE)
12 (BLUE)	TLV (BLUE)
13 (BLUE)	TRN (BLUE)
14 (BLUE)	FTN (BLUE)
15 (BLUE)	FFN (BLUE)

16 (BLUE)	SXN (BLUE)
17 (BLUE)	SVT (BLUE)
18 (BLUE)	ETN (BLUE)
19 (BLUE)	NTN (BLUE)
20 (BLUE)	TWY (BLUE)
21 (BLUE)	TWON (BLUE)
22 (BLUE)	TWTO (BLUE)
23 (BLUE)	TWTH (BLUE)
24 (BLUE)	TWFR (BLUE)
25 (BLUE)	TWFV (BLUE)
26 (BLUE)	TWSX (BLUE)
27 (BLUE)	TWSV (BLUE)
28 (BLUE)	TWET (BLUE)
29 (BLUE)	TWNI (BLUE)
30 (BLUE)	TRTY (BLUE)
31 (BLUE)	TRON (BLUE)
32 (BLUE)	TRTO (BLUE)
33 (BLUE)	TRTH (BLUE)
34 (BLUE)	TRFR (BLUE)
35 (BLUE)	TRFV (BLUE)
36 (BLUE)	TRSX (BLUE)
37 (BLUE)	TRSV (BLUE)
38 (BLUE)	TRET (BLUE)
39 (BLUE)	TRNI (BLUE)
40 (BLUE)	FRTY (BLUE)
41 (BLUE)	FRON (BLUE)
42 (BLUE)	FRTO (BLUE)
43 (BLUE)	FRTH (BLUE)
44 (BLUE)	FRFR (BLUE)
45 (BLUE)	FRFV (BLUE)
46 (BLUE)	FRSX (BLUE)
47 (BLUE)	FRSV (BLUE)
48 (BLUE)	FRET (BLUE)
49 (BLUE)	FRNI (BLUE)
50 (BLUE)	FFTY (BLUE)
51 (BLUE)	FFON (BLUE)
52 (BLUE)	FFTO (BLUE)
53 (BLUE)	FFTH (BLUE)
54 (BLUE)	FFFR (BLUE)
55 (BLUE)	FFFV (BLUE)

56 (BLUE)	FFSX (BLUE)
57 (BLUE)	FFSV (BLUE)
58 (BLUE)	FFET (BLUE)
59 (BLUE)	FFNI (BLUE)
60 (BLUE)	SXTY (BLUE)
61 (BLUE)	SXON (BLUE)
62 (BLUE)	SXTO (BLUE)
63 (BLUE)	SXTH (BLUE)
64 (BLUE)	SXFR (BLUE)
65 (BLUE)	SXFV (BLUE)

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2306), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2306-0000001-001.

H. Pack - A Pack of the "BREAK THE BANK SUPER TICKET™" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 050 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 050 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "BREAK THE BANK SUPER TICKET™" Scratch Ticket Game No. 2306.

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 "BREAK THE BANK SUPER TICKET™" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose one hundred twenty (120) Play Symbols. GAMES 1 & 2: If the player matches any of the YOUR NUMBERS Play Symbols to the WINNING NUMBER Play Symbol, the player wins the prize for that number. If the player reveals a "$$" Play Symbol, the player wins DOUBLE the prize for that symbol. BONUS GAMES 1 - 4: If the player reveals 2 matching prize amounts in the same BONUS, the player wins that amount. GAME 3: 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 any of the player's YOUR NUMBERS Play Symbols that match a WINNING NUMBER Play Symbol are GREEN, the player wins DOUBLE the prize for that number. GAME 4: 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 any of the player's YOUR NUMBERS Play Symbols that match a WINNING NUMBER Play Symbol are BLUE, the player wins DOUBLE the prize for that number. 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 one hundred twenty (120) 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 one hundred twenty (120) 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 one hundred twenty (120) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the one hundred twenty (120) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to fifty-four (54) times in accordance with the approved prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. GENERAL: The $5 Prize Symbol will only appear on winning Tickets in which the $5 prize is part of a winning pattern.

E. GENERAL: The twelve (12) WINNING NUMBER/WINNING NUMBERS Play Symbols in GAMES 1 - 4 will be different on the same Ticket.

F. GENERAL: The WINNING NUMBER/WINNING NUMBERS Play Symbol from one (1) GAME will never match the YOUR NUMBERS Play Symbols from another GAME on the same Ticket.

G. GAMES 1 & 2: Non-winning YOUR NUMBERS Play Symbols will all be different.

H. GAMES 1 & 2: Non-winning Prize Symbols will never appear more than two (2) times.

I. GAMES 1 & 2: The "$$" (DBL) Play Symbol will never appear in the WINNING NUMBER Play Symbol spot.

J. GAMES 1 & 2: The "$$" (DBL) Play Symbol will only appear as dictated by the prize structure.

K. GAMES 1 & 2: Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

L. GAMES 1 & 2: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol(s) (i.e., 05 and $5).

M. GAMES 1 & 2: GAME 1 and GAME 2 will not have matching Play Symbol and Prize Symbol patterns on a Ticket, unless restricted by other parameters, play action or prize structure. GAME 1 and GAME 2 have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and/or Prize Symbols in the same respective spots.

N. GAMES 3 & 4: Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

O. GAMES 3 & 4: Each GAME will contain five (5) different WINNING NUMBERS Play Symbols.

P. GAMES 3 & 4: The GREEN and BLUE Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

Q. GAMES 3 & 4: The GREEN and BLUE winning Play Symbols will only appear as dictated by the prize structure and will win DOUBLE the prize amount.

R. GAMES 3 & 4: Non-winning GAMES will contain twenty (20) different YOUR NUMBERS Play Symbols.

S. GAMES 3 & 4: On winning GAMES, non-winning YOUR NUMBERS Play Symbols will all be different.

T. GAMES 3 & 4: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 05 and $5).

U. GAMES 3 & 4: When comparing Play Symbols, only consider their numerical value, as they will have the same value regardless of the color.

V. GAMES 3 & 4: Non-winning GREEN and BLUE YOUR NUMBERS Play Symbols will never match any WINNING NUMBERS Play Symbols.

W. GAMES 3 & 4: GAME 3 will contain at least nine (9) but no more than eleven (11) GREEN YOUR NUMBERS Play Symbols numbers, unless restricted by the prize structure or other parameters.

X. GAMES 3 & 4: GAME 4 will contain at least nine (9) but no more than eleven (11) BLUE YOUR NUMBERS Play Symbols numbers, unless restricted by the prize structure or other parameters.

Y. GAMES 3 & 4: GAME 3 and GAME 4 will not have matching Play Symbol and Prize Symbol patterns on a Ticket, unless restricted by other parameters, play action or prize structure. GAME 3 and GAME

4 have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and/or Prize Symbols in the same respective spots.

Z. BONUS 1-4: Across BONUS 1-4 play areas, non-winning Prize Symbols will be different.

AA. BONUS 1-4: Across BONUS 1-4 play areas, non-winning Prize Symbols will not be the same as winning Prize Symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "BREAK THE BANK SUPER TICKET™" Scratch Ticket Game prize of $10.00, $20.00, $30.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BREAK THE BANK SUPER TICKET™" Scratch Ticket Game prize of $1,000, $20,000 or $250,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BREAK THE BANK SUPER TICKET™" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "BREAK THE BANK SUPER TICKET™" 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 "BREAK THE BANK SUPER TICKET™" 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 8,160,000 Scratch Tickets in Scratch Ticket Game No. 2306. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2306 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10	979,200	8.33
$20	612,000	13.33
$30	122,400	66.67
$50	326,400	25.00
$100	81,600	100.00
$200	25,160	324.32
$500	1,156	7,058.82
$1,000	164	49,756.10
$20,000	8	1,020,000.00
$250,000	4	2,040,000.00

*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 3.80. 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. 2306 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. 2306, 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-202101474
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 7, 2021

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Public Utility Commission of Texas

Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 5, 2021, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Bandera Electric Cooperative, Inc. for Designation as an Eligible Telecommunications Carrier, Docket Number 51978.

The Application: Bandera Electric Cooperative seeks designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Bandera Electric Cooperative seeks an ETC designation for the purpose of qualifying to receive federal support in 534 locations in 14 census blocks located in Bandera, Kerr, and Medina Counties within certain non-rural wire centers to provide federally supported voice telephony and broadband services through the Rural Digital Opportunity Fund. The 14 census blocks which form the service area for which Bandera Electric Cooperative seeks eligibility are located in Bandera, Kerr, and Medina Counties and are further identified in exhibit 2 and maps depicting the census blocks are found in exhibit 3 of Bandera Electric Cooperative's application.

The proposed effective date is May 17, 2021, or 30 days after notice is published, whichever is later.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than April 30, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51978.

TRD-202101475

♦ ♦ ♦

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 21-9036

ORDER AMENDING SUPERVISED PRACTICE RULE II(B)(2)(a)(ii) AND THE TEMPORARY WAIVER OF SUPERVISED PRACTICE RULE IV(B)(1)

ORDERED that:

1. On May 20, 2020, in Misc. Dkt. No. 20-9069, the Court gave final approval to the *Rules Governing the Supervised Practice of Law by Qualified Law Students and Qualified Unlicensed Law School Graduates in Texas* ("Supervised Practice Rules") pursuant to Section 81.102(b) of the Texas Government Code.

2. The Court amends Rule II(B)(2)(a)(ii) of the Supervised Practice Rules as follows.

3. In light of the unprecedented statewide power outages and damage caused by last month's winter storms and the disruption some applicants faced preparing for the February 2021 bar examination, the Court also amends Paragraph 5 of Misc. Dkt. No. 20-9069 as follows to ensure that supervised practice under the Supervised Practice Rules remains an option for applicants who chose to wait and take the March 2021 make-up examination or the July 2021 examination:

> On a temporary basis, Rule IV(B)(1) is relaxed for 2019 and 2020 law graduates, as well as for graduates in prior years who have been serving as judicial law clerks, to the extent it prohibits those graduates from obtaining or maintaining a supervised practice card because they are approaching or have passed the 14-month anniversary of their graduation. Those graduates are permitted, on a temporary basis, to engage in the activities permitted under the Rules—provided that they meet all other requirements and obtain a supervised practice card—until the earlier of ~~July~~December 1, 2021, or the occurrence of another terminating event in Rule IV(B).

4. The Clerk of the Supreme Court is directed to:

   a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

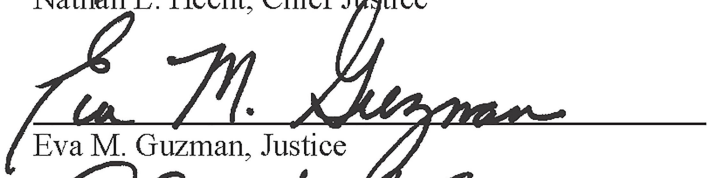
c. send a copy of this Order to each member of the Legislature; and

d. submit a copy of this Order for publication in the *Texas Register*.

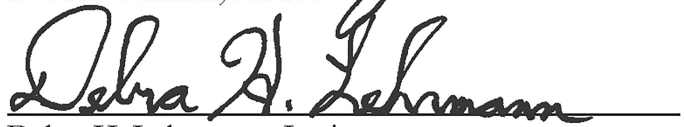
5. The Texas law school deans are requested to take all reasonable steps to notify their affected students of this Order.

Dated: March 30, 2021.

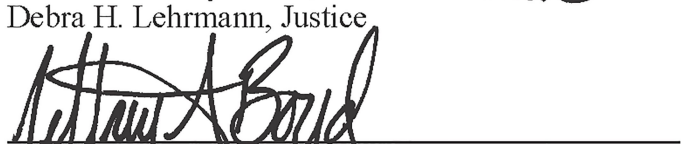
Nathan L. Hecht, Chief Justice



Eva M. Guzman, Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice

John P. Devine, Justice

James D. Blacklock, Justice

J. Brett Busby, Justice

Jane N. Bland, Justice

Rebeca A. Huddle, Justice

Rules Governing the Supervised Practice of Law by Qualified Law Students and Qualified Unlicensed Law School Graduates in Texas

Rule II. Eligibility; Qualified Law Student and Qualified Unlicensed Law School Graduate Defined

***

B. A qualified law student is a student who:

(1) is enrolled at a law school accredited or provisionally accredited by the American Bar Association, except that the law student need not be enrolled during a summer term or when school is not in session, in one of the following programs:

(a) a juris doctorate program; or

(b) an LL.M. program that satisfies the requirements of Rule 13 of the *Rules Governing Admission to the Bar of Texas*; and

(2) is certified by the dean of his or her law school or by the dean's designee to:

(a) have satisfactorily completed:

(i) at least two-thirds of the required juris doctorate curriculum for graduation as computed on an hourly basis;

(ii) at least ~~one-third of~~ the school's required juris doctorate curriculum for ~~graduation computed on an hourly basis~~a full-time first-year juris doctorate student if the student is enrolled in a clinical legal education program; or

(iii) at least one-half of the required LL.M. curriculum for graduation computed on an hourly basis if the student is enrolled in a clinical legal education program; and

(b) not be on academic probation; and

(c) possess the present good moral character and fitness required to practice law.

***

TRD-202101409
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: April 1, 2021

♦ ♦ ♦

Texas Water Development Board

Applications Received March 2021

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #21973, a request from the Green Valley Special Utility District, 529 South Center Street, Marion, Texas 78124-0099, received on

March 25, 2021, for $19,540,000 from the Texas Water Development Fund for Operations Center and Plant 11 improvements.

Project ID #72022 a request from the City of La Joya, 101 North Leo Street, La Joya, Texas 78560-4194, received on March 30, 2021, for 8,200,861 from the Clean Water State Revolving Fund for a wastewater treatment plant replacement project.

Project ID #73908 a request from North Texas Municipal Water District, 501 East Brown Street, Wylie, Texas 75098-4406, received on March 30, 2021, for $39,615,000 from the Clean Water State Revolving Fund for the Buffalo Creek Gravity project.

Project ID #73902 a request from the City of Comanche, 101 East Grand Avenue, Comanche, Texas 76442-3215, received on March 31, 2021, for $1,600,000 from the Clean Water State Revolving Fund for wastewater treatment plant and collection system improvement projects.

Project ID #73903 a request from the City of Mart, 112 North Commerce, Mart, Texas 76664-0360, received on March 31, 2021, for $7,745,000 from the Clean Water State Revolving Fund for wastewater system and treatment plant improvement projects.

Project ID #73904 a request from the City of Roma, 77 Convent Avenue, Roma, Texas 78584-5675, received on March 31, 2021 for $5,284,000 from the Clean Water State Revolving Fund for a wastewater improvement project.

Project ID #73905 a request from the City of Breckenridge, 105 North Rose Avenue, Breckenridge, Texas 76424-3531, received on March 31, 2021, for $4,163,000 from the Clean Water State Revolving Fund for a wastewater system improvement project.

Project ID #73906 a request from the City of Cranfills Gap, 310 North 3rd Street, Cranfills Gap, Texas 76637-0156, received on March 31, 2021, for $1,225,000 from the Clean Water State Revolving Fund for wastewater treatment and collection rehabilitation project.

Project ID #73907 a request from the City of Corpus Christi, 1201 Leopard Street, Corpus Christi, Texas 78401, received on March 31, 2021, for $4,751,502 from the Clean Water State Revolving Fund for the Oso Creek Channel Bottom rectification and green infrastructure project.

Project ID #62906 a request from the City of Comanche, 101 East Grand Avenue, Comanche, Texas 76442-3215, received on March 31, 2021, for $2,300,000 from the Drinking Water State Revolving Fund for a water system improvement project.

Project ID #62908 a request from the City of Gladewater, 519 East Broadway, Gladewater, Texas 75647-1725, received on March 31, 2021, for $2,638,000 from the Drinking Water State Revolving Fund for the phase two drinking water upgrade project.

Project ID #62835 a request from the City of Alice, 500 East Main, Alice, Texas 78332-4971, received on March 31, 2021, for $7,00,000 from the Drinking Water State Revolving Fund for a brackish desalination plant project.

TRD-202101455
Ashley Harden
General Counsel
Texas Water Development Board
Filed: April 7, 2021

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 46 (2021) is cited as follows: 46 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 "46 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 46 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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