TEXAS REGISTER

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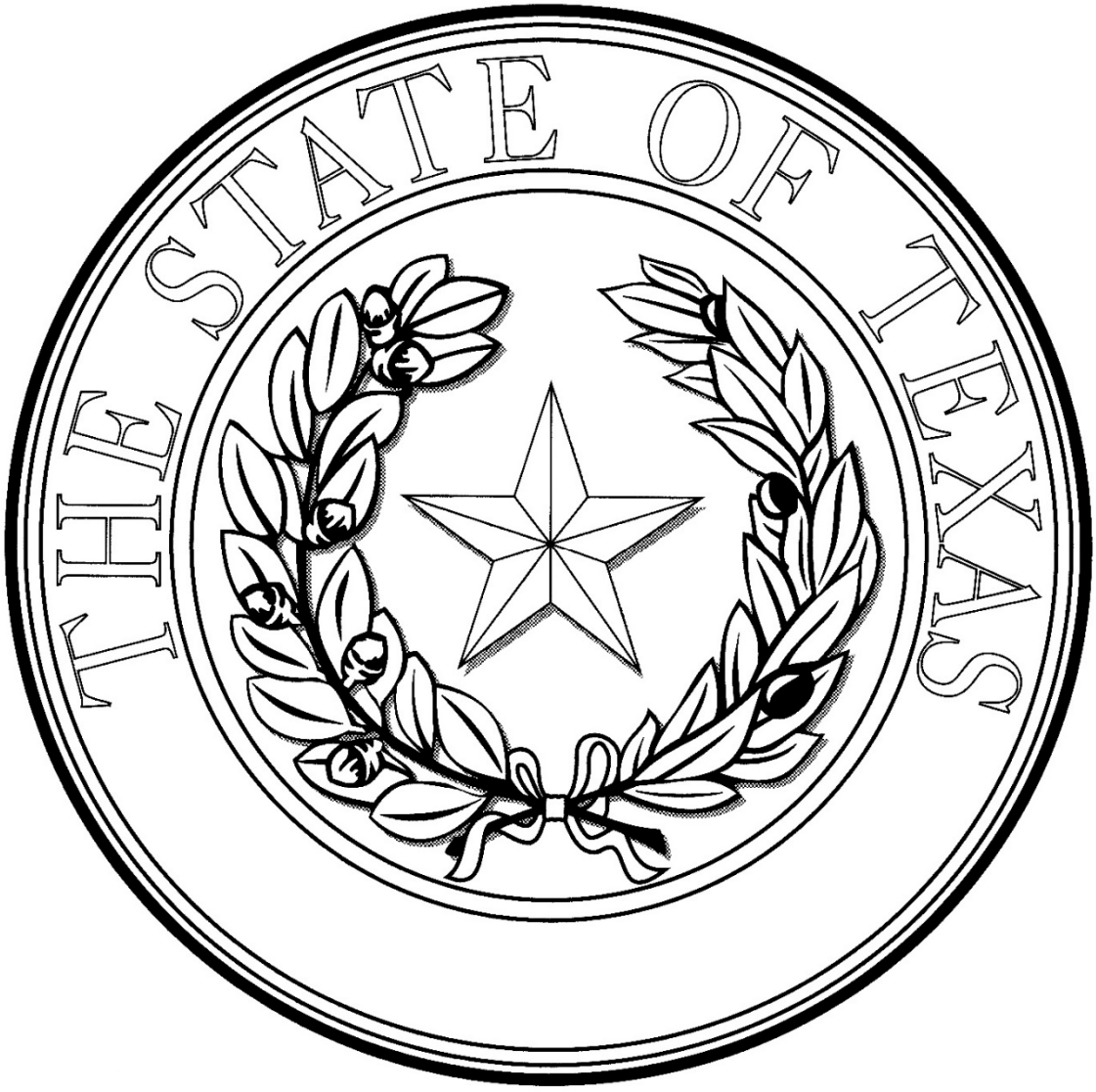

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, Texas 78711
(512) 463-5561
FAX (512) 463-5569

https://www.sos.texas.gov
register@sos.texas.gov

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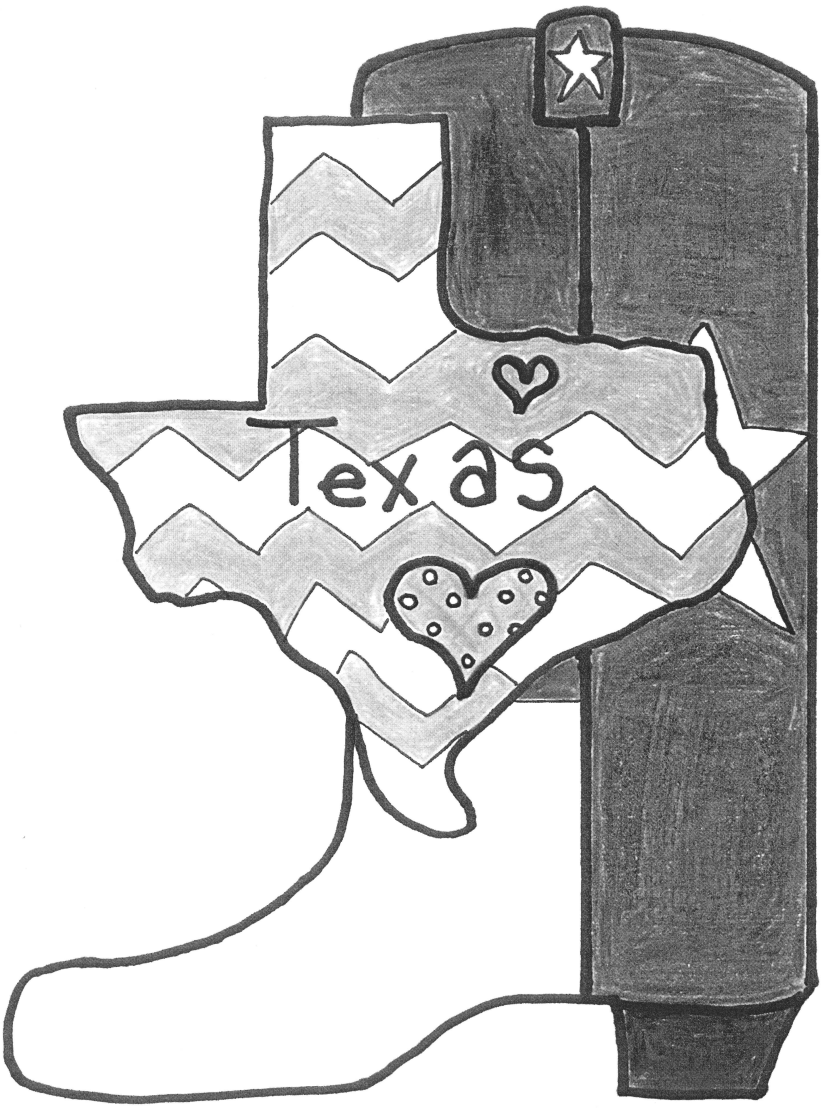
Texas

THE GOVERNOR

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

Proclamation 41-3820

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that significant flooding and severe weather pose a threat of imminent disaster, including widespread and severe property damage, injury, and loss of life, due to significant river flooding, flash flooding, tornadoes, hail, and damaging winds, in Calhoun, Jasper, Jefferson, Kleberg, Newton, and Tyler counties.

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties based on the existence of such threat.

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 requirement, 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 19th day of May, 2021.

Greg Abbott, Governor

TRD-202102042

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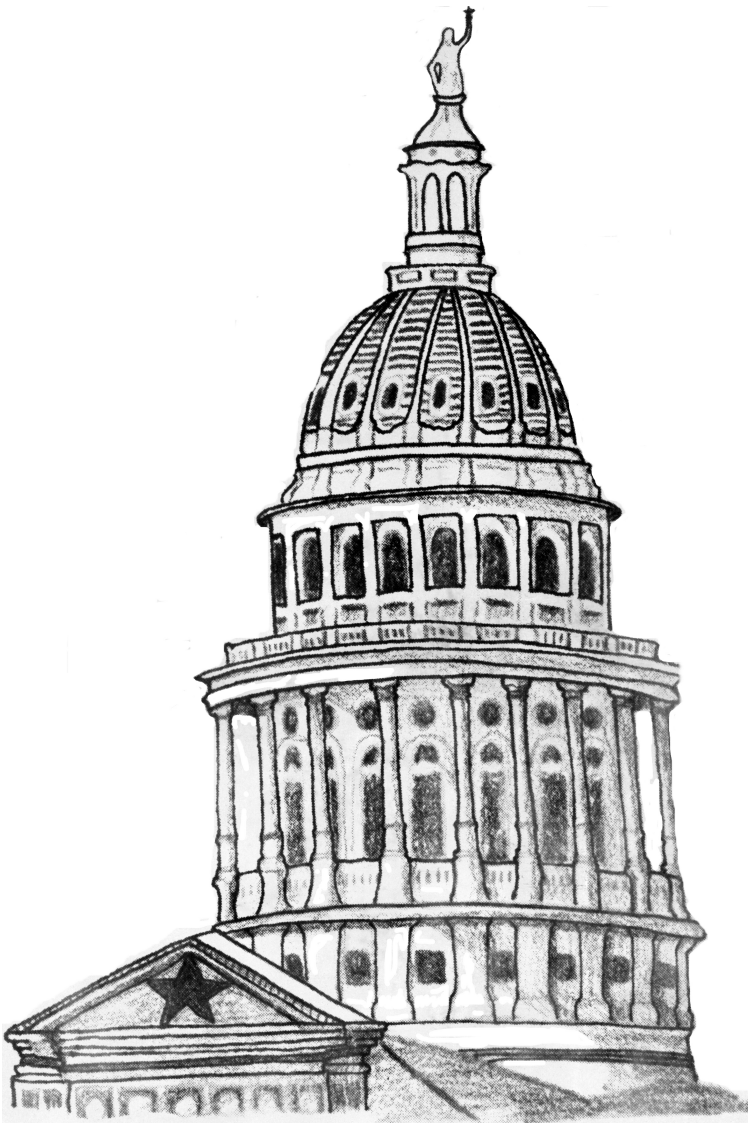

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law,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

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 73. ELECTRICIANS

16 TAC §73.100

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule on an emergency basis at 16 Texas Administrative Code (TAC), Chapter 73, §73.100, Technical Requirements, regarding delaying the applicability of Section 210.8(F) of the 2020 National Electrical Code. The effective date for this emergency rule is May 20, 2021.

EXPLANATION OF AND JUSTIFICATION FOR THE EMERGENCY RULE

The rules under 16 TAC Chapter 73, Electricians, implement Texas Occupations Code, Chapter 1305, Electricians.

Pursuant to Occupations Code, Chapter 1305, §1305.101(a)(2), the Commission is required to adopt the National Electrical Code (NEC) every three years "as the electrical code for the state." The Commission has adopted the 2020 NEC in its entirety by rule at 16 TAC, Chapter 73, §73.100, Technical Requirements. Section 90.4 of the 2020 NEC authorizes the Department to waive specific code requirements when doing so will not have a negative impact on safety.

Section 210.8(F) of the 2020 NEC requires certain outdoor outlets to have ground-fault circuit-interrupter (GFCI) protection. An incompatibility between most GFCI products on the market and certain types of air-conditioning and heating equipment has resulted in that equipment failing by persistently tripping circuit breakers. The approaching summer heat poses a serious threat to Texas residents whose air-conditioning systems have failed or are malfunctioning. Adopting the emergency rule would help keep Texas residents safe by ensuring installed air-conditioning systems are not subject to failure due to equipment incompatibility. Additionally, the Department's technical experts have confirmed that adopting the emergency rule would not have a negative impact on safety.

In short, the continued application of Section 210.8(F) of the 2020 NEC presents an imminent peril to the public health, safety, or welfare requiring adoption of the emergency rule on fewer than 30 days' notice.

SECTION BY SECTION SUMMARY

The emergency rule amends §73.100 by placing the existing rule text into new subsection (a) and adding new subsection (b) to state that compliance with Section 210.8(F) of the 2020 NEC is not required until January 1, 2023. It is widely expected that manufacturers of both electrical and air-conditioning equipment will have resolved the compatibility issues by this date, at which point the danger to Texas residents will subside.

COMMISSION ACTION

At its meeting on May 18, 2021, the Commission adopted the emergency rule without changes as recommended by the Department.

FUTURE RULEMAKING

Under Texas Government Code §2001.034, the emergency rule may be effective for 120 days, and may be renewed once for an additional 60 days. The Department may propose this or a similar rule under the normal rulemaking process and will consider any additional action necessary in the event unforeseen issues arise with the adopted section.

STATUTORY AUTHORITY

The emergency rule is adopted with abbreviated or no notice and with an expedited effective date under Texas Government Code §2001.034(a) and §2001.036(a)(2).

The emergency rule is adopted under Texas Occupations Code, Chapters 51 and 1305, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement those chapters.

The statutory provisions affected by the emergency rule are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the emergency rule.

§73.100. Technical Requirements.

(a) Effective November 1, 2020, the department adopts the 2020 National Electrical Code as approved by the National Fire Protection Association, Inc. on August 25, 2019.

(b) Notwithstanding subsection (a), compliance with Section 210.8(F) of the 2020 National Electrical Code is not required until January 1, 2023.

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 May 20, 2021.

TRD-202102027
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: May 20, 2021
Expiration date: September 16, 2021
For further information, please call: (512) 475-4879

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CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

16 TAC §75.100

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule on an emergency basis at 16 Texas Administrative Code (TAC), Chapter 75, §75.100, Technical Requirements, regarding delaying the applicability of Section 210.8(F) of the 2020 National Electrical Code. The effective date for this emergency rule is May 20, 2021.

EXPLANATION OF AND JUSTIFICATION FOR THE EMERGENCY RULE

The rules under 16 TAC Chapter 75, Air Conditioning and Refrigeration, implement Texas Occupations Code, Chapter 1302, Air Conditioning and Refrigeration Contractors.

Pursuant to 16 TAC, Chapter 75, §75.100(a)(4), electrical work performed by air conditioning and refrigeration contractors must be performed in accordance with the 2020 National Electrical Code (NEC). Section 90.4 of the 2020 NEC authorizes the Department to waive specific code requirements when doing so will not have a negative impact on safety.

Section 210.8(F) of the NEC requires certain outdoor outlets to have ground-fault circuit-interrupter (GFCI) protection. An incompatibility between most GFCI products on the market and certain types of air-conditioning and heating equipment has resulted in that equipment failing by persistently tripping circuit breakers. The approaching summer heat poses a serious threat to Texas residents whose air-conditioning systems have failed or are malfunctioning. Adopting the emergency rule would help keep Texas residents safe by ensuring installed air-conditioning systems are not subject to failure due to equipment incompatibility. Additionally, the Department's technical experts have confirmed that adopting the emergency rule would not have a negative impact on safety.

In short, the continued application of Section 210.8(F) of the 2020 NEC presents an imminent peril to the public health, safety, or welfare requiring adoption of the emergency rule on fewer than 30 days' notice.

SECTION BY SECTION SUMMARY

The emergency rule amends §75.100 by adding new subsection (a)(5) to state that compliance with Section 210.8(F) of the 2020 NEC is not required until January 1, 2023. It is widely expected that manufacturers of both electrical and air-conditioning equipment will have resolved the compatibility issues by this date, at which point the danger to Texas residents will subside.

COMMISSION ACTION

At its meeting on May 18, 2021, the Commission adopted the emergency rule without changes as recommended by the Department.

FUTURE RULEMAKING

Under Texas Government Code §2001.034, the emergency rule may be effective for 120 days, and may be renewed once for an additional 60 days. The Department may propose this or a similar rule under the normal rulemaking process and will consider any additional action necessary in the event unforeseen issues arise with the adopted section.

STATUTORY AUTHORITY

The emergency rule is adopted with abbreviated or no notice and with an expedited effective date under Texas Government Code §2001.034(a) and §2001.036(a)(2).

The emergency rule is adopted under Texas Occupations Code, Chapters 51 and 1302, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement those chapters.

The statutory provisions affected by the emergency rule are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the emergency rule.

§75.100. Technical Requirements.

(a) Electrical Connections.

(1) On new construction of environmental air conditioning, commercial refrigeration, and process cooling or heating systems, licensees may connect the appliance to the electrical line or disconnect that is provided for that purpose.

(2) Licensees may replace and reconnect environmental air conditioning, commercial refrigeration, process cooling or heating systems, or component parts of the same or lesser amperage. On replacement environmental air conditioning, commercial refrigeration, process cooling or heating systems where the electrical disconnect has not been installed and is required by the applicable National Electrical Code, the licensee may install a disconnect and reconnect the system.

(3) Control wiring of 50 volts or less may be installed and serviced by a licensee. Control wiring for commercial refrigeration equipment of any voltage may be installed by a licensee with the commercial refrigeration endorsement as long as the control wiring is on the equipment side of the disconnect installed for that purpose.

(4) All electrical work shall be performed in accordance with standards at least as strict as that established by the applicable National Electrical Code and the International Residential Code, where applicable.

(5) Notwithstanding subsection (a)(4), compliance with Section 210.8(F) of the 2020 National Electrical Code is not required until January 1, 2023.

(b) Piping.

(1) Fuel gas piping for new or replaced environmental air conditioning, commercial refrigeration, or process cooling or heating systems may be installed by a licensee. Fuel gas piping by a licensee is limited to the portion of piping between the appliance and the existing piping system, connected at an existing shut-off valve for such use. Existing piping systems, stops, or shut-off valves shall not be altered by a licensee.

(2) Drain piping associated with environmental air conditioning, commercial refrigeration, or process cooling or heating systems shall be installed by a licensee if it terminates outside the building. If the piping terminates inside the building, a licensee may make the connection if the connection is on the inlet side of a properly installed trap. Such drain piping shall be installed in accordance with applicable plumbing and building codes.

(3) Other piping, fittings, valves and controls associated with environmental air conditioning, commercial refrigeration, or process cooling or heating systems shall be installed by a licensee.

(c) Duct cleaning.

(1) Duct cleaning and air quality testing, including biomedical testing, may be performed by a person or entity that does not hold a contractor license under Texas Occupations Code Chapter 1302 if:

(A) the task is limited to the air distribution system, from the supply plenum to the supply grilles of the unit and from the return air grill to the air handler intake of the unit;

(B) no cuts are made to ducts or plenums;

(C) no changes are made to electrical connections; and

(D) the only disassembly of any part of the system is opening or removal of return and supply air grilles, or registers that are removable without cutting or removing any other part of the system.

(2) Biomedical testing may be performed by a person or entity that does not hold a contractor license under Texas Occupations Code, Chapter 1302.

(3) Biomedical remediation requires a contractor license under Texas Occupations Code, Chapter 1302.

(d) Process Cooling and Heating.

(1) Process cooling and heating work does not include cryogenic work.

(2) Process cooling and heating work is limited to work performed on piping and equipment in the primary closed loop portions of processing systems containing a primary process medium. Once a primary closed loop process system has been deactivated and rendered inert by a licensee, a person or entity that does not hold a contractor license under Texas Occupations Code, Chapter 1302 may perform maintenance, service and repairs on the secondary open loop components including piping, heat exchangers, vessels, cooling towers, sump pumps, motors, and fans.

(e) Standards.

(1) The standard for the practice of air conditioning and refrigeration in a municipality is the code the municipality adopted by ordinance that is consistent with the standards established under the Act and this chapter.

(2) The standard for the practice of air conditioning and refrigeration in an area where no code has been adopted is:

(A) The applicable edition of the International Residential Code for one- and two-family dwellings, and multiple single family dwellings (townhouses) not more than three stories in height with separate means of egress, together with the applicable editions of the International Fuel Gas Code and the International Energy Conservation Code;

(B) For commercial work and any multiple family residential work that exceeds the limitations of subparagraph (A), the contractor performing the work may choose between:

(i) the applicable edition of the Uniform Mechanical Code; or

(ii) the applicable editions of the International Mechanical Code, International Fuel Gas Code and International Energy Conservation Code.

(f) System Testing and Balancing.

(1) System testing may be performed by a person or entity that does not hold a contractor license under Texas Occupations Code, Chapter 1302.

(2) System balancing requires a contractor license under Texas Occupations Code, Chapter 1302.

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 May 20, 2021.

TRD-202102026
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: May 20, 2021
Expiration date: September 16, 2021
For further information, please call: (512) 475-4879

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 448. STANDARD OF CARE
SUBCHAPTER F. PERSONAL PRACTICES AND DEVELOPMENT

25 TAC §448.603

The Department of State Health Services is renewing the effectiveness of emergency amended §448.603 for a 60-day period. The text of the emergency rule was originally published in the February 5, 2021, issue of the *Texas Register* (46 TexReg 893).

Filed with the Office of the Secretary of State on May 25, 2021.

TRD-202102095
Nycia Deal
Attorney
Department of State Health Services
Original effective date: January 27, 2021
Expiration date: July 25, 2021
For further information, please call: (512) 834-4591

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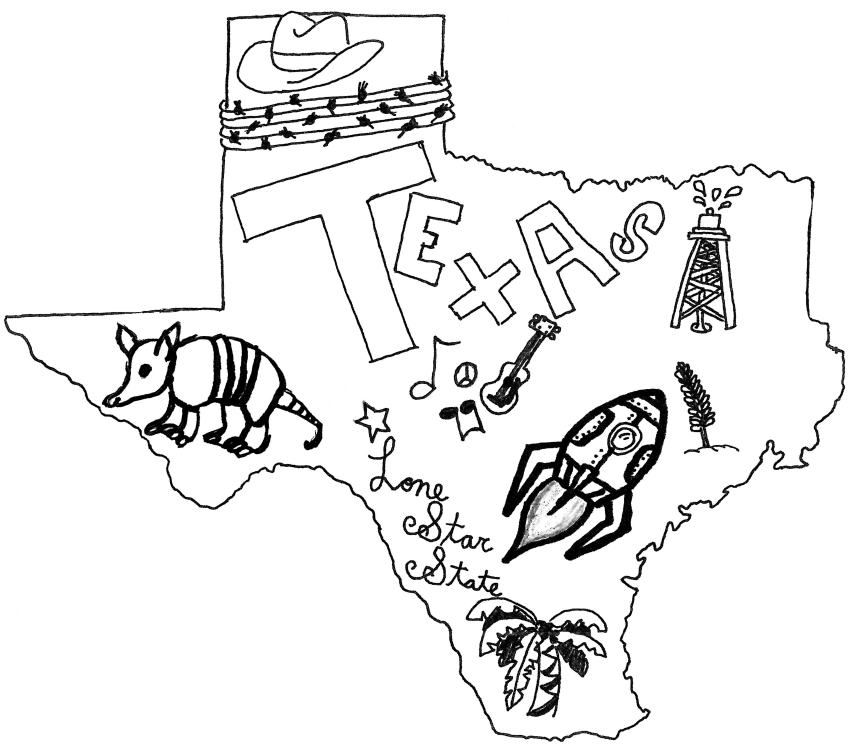
TEXAS
Lone Star State

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 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE

The State Office of Administrative Hearings (SOAH) proposes amendments to the following sections of Texas Administrative Code, Title 1, Part 7, Chapter 155, Rules of Procedure: Subchapter A, §155.1, Purpose; Subchapter C, §155.101, Filing Documents, §155.103, Public and Confidential Information; and Subchapter F, §155.255, Written Discovery.

Explanation of Proposed Rules.

Amendments to SOAH's Rules of Procedure for general docket cases are proposed to address two separate matters: (1) the electronic filing and service of documents in special education due process proceedings under the federal Individuals with Disabilities in Education Act (20 U.S.C. §§1400, *et seq.*, commonly referred to as "IDEA"); and (2) clarification of SOAH's written discovery rules in light of recent amendments to the Texas Rules of Civil Procedure (TRCP).

SOAH previously amended its Rules of Procedure in Chapter 155 to facilitate the use of electronic-filing and service for pleadings and other documents. As a result, eFile Texas, the state's official electronic court filing platform, was successfully implemented at SOAH on March 3, 2020, for nearly all general docket proceedings. The proposed amendments to §§155.5, 155.101, and 155.103 would expand the application of SOAH's rules pertaining to electronic filing, confidential information, service, and related matters to pleadings, exhibits, and other documents filed in IDEA proceedings referred to SOAH by the Texas Education Agency (TEA). The amendments to §155.5 would specify that SOAH's procedural rules for filing, confidential information, and service apply to IDEA proceedings. The amendments to §155.101 would eliminate the current exception in §155.101(b) that exempts filers in IDEA cases from the need to comply with SOAH's filing rules. By reference, the application of §155.101 to IDEA cases would also extend certain other SOAH rules to IDEA proceedings relating to service, pleadings, exhibits, and mediation records. Finally, the amendments to §155.103 would add IDEA cases to the current list of proceedings at SOAH for which case records and proceedings are designated as confidential and closed to the public because of the necessity to comply with applicable confidentiality laws.

Existing SOAH rules in §155.101(b)(2) that encourage, but do not require, unrepresented parties to file documents electronically by use of an electronic filing manager are not proposed for amendment. However, by extension of SOAH's filing rules to IDEA cases, unrepresented parties in IDEA proceedings would be expected to generally comply with requirements for filing, formatting, confidentiality, and service of documents in the same manner as unrepresented participants in all other types of general docket cases at SOAH.

The amendments are necessary to promote uniform filing practices, improve electronic document security and access, and promote efficiency in the handling of records for IDEA cases at SOAH. The amendments will also prepare school districts, special education practitioners, TEA, and SOAH's own administrative law judges and staff for SOAH's transition of the IDEA caseload to a new modern electronic court records management system, which is scheduled for launch sometime during state fiscal year 2022. The proposed amendments do not alter any other procedural rules for IDEA cases administered by SOAH, except for the method and procedures for filing and service of documents.

The proposed amendments also include changes to written discovery procedures for general docket cases at SOAH.

Effective January 1, 2021, the Texas Supreme Court amended TRCP Rules 194 and 195 to impose a duty upon the parties to promptly make certain initial disclosures without awaiting a discovery request for the information. Although proceedings at SOAH are not directly governed by the application of the TRCP, §155.255 of SOAH's Rules of Procedure provides that the forms of written discovery provided by the TRCP may generally be used by parties to contested cases at SOAH. Rule §155.3(g) also provides that the TRCP may be interpreted and construed as persuasive authority for determining contested procedural issues at SOAH in the event that the issue cannot be resolved by the application of SOAH's own procedural rules. As a result, SOAH proposes amendments to §155.255 in order to clarify that the initial disclosures required by TRCP Rules do not apply to a contested case proceeding at SOAH, except as provided by §155.255 or as ordered by the presiding administrative law judge. The proposed amendments also describe categories of information that may be subject to a request for disclosure, and require certain disclosures relating to testifying expert witnesses in the same manner as provided by TRCP Rule 195. The amendments are necessary to avoid confusion among the parties during the discovery phase of a contested case at SOAH, as some parties might otherwise remain uncertain of what disclosures are required for compliance with SOAH's Rules of Procedure.

Fiscal Note/Public Benefit.

Kristofer S. Monson, Chief Administrative Law Judge for SOAH, has determined for the first five-year period the proposed rule amendments are in effect, there will be a benefit to the general public, school districts, attorneys, and other parties appearing at SOAH because the proposed rule amendments will provide improved efficiency in the filing and service of documents relating

to IDEA cases at SOAH. The proposed rule amendments will also offer a public benefit by establishing a clearer understanding of procedures to be followed during discovery for contested case hearings under SOAH's Rules of Procedure.

Probable Economic Costs. Chief Judge Monson has determined that for the first five-year period the proposed rule amendments are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of the proposed rules regarding the filing and service of documents in IDEA proceedings, or the proposed rules regarding disclosures during written discovery. Additionally, Chief Judge Monson has determined that the proposed rule amendments do not have foreseeable implications relating to the costs or revenues of state or local government. Although some filing parties in IDEA cases could incur transactional costs of obtaining access to an e-filing service provider approved by the Office of Court Administration (OCA), multiple service providers are available who offer e-filing services at no cost on OCA's website at https://www.efiletexas.gov/service-providers.htm. The state's official e-filing service provider, eFile Texas, is also available at no cost to users. Moreover, exceptions to SOAH's electronic filing requirements are available for unrepresented parties and by exception of the presiding administrative law judge upon a showing of good cause; therefore no significant fiscal impact to the participants in IDEA cases is likely to result. Any costs that may be incurred are also anticipated to be off-set by cost-savings and efficiencies associated with the use of electronic filing, as costs associated with the production and filing of exhibits and confidential documents in paper and other formats will be reduced or eliminated. While the proposed rules may require some parties to modify their current filing and discovery practices, these efforts are necessary to promote uniformity, fairness, and efficiency in the filing of administrative case records and the disclosure of information during discovery.

Fiscal Impact on Small Businesses, Micro-Businesses, and Rural Communities. There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule amendments. Because the agency has determined that the proposed rule amendments will have no adverse economic effects on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and Regulatory Analysis, as provided in Government Code §2006.002, is not required.

Local Employment Impact Statement. Chief Judge Monson has determined that the proposed rule amendments will not affect the local economy so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

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

(1) The proposed rule amendments do not create or eliminate a government program.

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

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

(4) The proposed rule amendments do not require an increase or decrease in fees paid to the agency.

(5) The proposed rule amendments do not create a new regulation.

(6) The proposed rule amendments do not expand, limit, or repeal existing regulations.

(7) The proposed rule amendments do not increase the number of individuals subject to the rule's applicability.

(8) The proposed rule amendments do not positively or adversely affect this state's economy.

Takings Impact Assessment. Chief Judge Monson has determined that the proposed rule amendments will not affect private real property interests; therefore, SOAH is not required to prepare a takings impact assessment under Government Code §2007.043.

Submission of Comments.

Written comments on the proposed rules may be submitted to Angela Pardo, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025 or by email to: questions@soah.texas.gov with the subject line "SOAH Rule Comments." The deadline for receipt of comments is 5:00 p.m. on July 5, 2021. All requests for a public hearing on the proposed rules, submitted under the Administrative Procedure Act, must be received by the State Office of Administrative Hearings no more than fifteen (15) days after the notice of proposed rules has been published in the *Texas Register.*

SUBCHAPTER A. GENERAL

1 TAC §155.1

Statutory Authority

The rule amendments are proposed under Texas Government Code § 2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH.

Cross Reference to Statute

The proposed rule amendments affect Chapters 2001 and 2003 of the Texas Government Code.

§155.1. Purpose.

(a) This chapter governs the procedures of the State Office of Administrative Hearings (SOAH). These rules apply in all matters referred to SOAH, including contested cases under the Administrative Procedure Act (APA), Tex. Gov't Code Chapter 2001. These rules do not apply to matters otherwise addressed by statute or to matters that are otherwise limited by the provisions of this chapter.

(b) Administrative License Suspension cases initiated by the Texas Department of Public Safety are governed by Chapter 159 of this title.

(c) Arbitration procedures for certain enforcement actions of the Texas Department of Aging and Disability Services regarding assisted living facilities and nursing homes are governed by Chapters 156 and 163 of this title.

(d) Appeals of appraisal review board decisions are governed by Chapter 165 of this title.

(e) Dispute resolution procedures for certain consumer health benefit disputes under Insurance Code, Chapter 1467, are governed by Chapter 167 of this title.

(f) SOAH adopts by reference the procedural rules of the Public Utility Commission of Texas (PUC) and the Texas Commission on Environmental Quality (TCEQ) that address the contested case process in matters referred by those agencies. This adoption does not include any PUC or TCEQ rules addressing the use of Alternative Dispute Resolution (ADR) processes at SOAH. Those ADR processes are governed by the Governmental Dispute Resolution Act, Tex. Gov't Code Chapter 2009; SOAH rule provisions pertaining to ADR; and interagency contracts, memoranda of understanding, or other written agreements with referring entities.

(g) SOAH adopts by reference the procedural rules of the Comptroller of Public Accounts (CPA) that address the hearing process in matters referred by that agency pertaining to protesting preliminary findings of a property value study.

(h) Under Tex. Gov't Code §815.102, the procedural rules of the Employees Retirement System of Texas (ERS) govern the formal contested case process in matters it refers to SOAH.

(i) Proceedings under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400, *et seq.,* are governed by that statute, federal regulations at 34 C.F.R. Part 300, [~~and~~] the rules of the Texas Education Agency at 19 TAC Chapter 89, and the procedures set forth in §§155.101, 155.103, and 155.105 of this chapter (relating to Filing Documents, Confidential Information, and Service of Documents on Parties).

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 May 19, 2021.

TRD-202102014
Shane Linkous
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: July 4, 2021
For further information, please call: (512) 475-4993

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SUBCHAPTER C. FILING AND SERVICE OF DOCUMENTS

1 TAC §155.101, §155.103

Statutory Authority

The rule amendments are proposed under Texas Government Code § 2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH.

Cross Reference to Statute

The proposed rule amendments affect Chapters 2001 and 2003 of the Texas Government Code.

§155.101. Filing Documents.

(a) Filing and service required.

(1) All pleadings and other documents shall be filed using one of the methods described in this rule.

(2) On the same date a document is filed, it shall also be served on all other parties as described in §155.105 of this chapter.

(b) Method and format of filing in all cases other than PUC[,] and TCEQ[, ~~and IDEA~~] cases, or matters referred for mediation.

(1) Electronic Filing Required.

(A) Except as otherwise provided in this subchapter, attorneys, state agencies, and other governmental entities are required to file all documents, including exhibits, electronically in the manner specified on SOAH's website, www.soah.texas.gov. SOAH may require parties to electronically file documents through the electronic filing manager established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration. Parties not represented by an attorney are strongly encouraged to electronically file documents but may use alternative methods of filing described in paragraph (2) of this subsection.

(B) The electronic version of a document that has been electronically filed at SOAH shall be given the same legal status as the original document.

(C) In addition to the other requirements of this rule, electronic filings must comply with all requirements and procedures set forth on SOAH's website and electronic filing page, and the applicable technology standards of the Judicial Committee on Information Technology if filed through the electronic filing manager established by the Office of Court Administration.

(D) Formatting and submission. A document filed electronically must:

(i) be legible and in text-searchable portable document format (PDF);

(ii) be directly converted to PDF rather than scanned, to the extent possible;

(iii) not be locked;

(iv) include the email address of a party, attorney, or representative who electronically files the document;

(v) be accompanied by the entry in the electronic filing manager of complete and accurate service contact information known to the parties at the time of filing, including the designation of lead counsel if the party is represented by counsel;

(vi) include the SOAH docket number and the name of the case in which it is filed, if not attached to a pleading or document that already contains this information;

(vii) be properly titled or described in the electronic filing manager in a manner that permits SOAH and the parties to reasonably ascertain its contents;

(viii) if the document submitted for filing contains confidential information, comply with the requirements of §155.103 of this chapter and be submitted separately from public pleadings, exhibits, or filings to the extent possible;

(ix) if the document submitted for filing is an exhibit, comply with the requirements of §155.429 of this chapter and be submitted separately from pleadings or other filings, unless the exhibit is attached as a necessary supporting document to a pleading; and

(x) if the document submitted for filing is a motion, the motion will comply with the requirements of §155.305 of this chapter and be submitted separately from pleadings or other filings.

(E) A pleading or document that is filed electronically is considered signed if the document includes an electronic signature.

(F) Time of filing. Unless a document must be filed by a certain time of day, a document is considered timely filed if it is electronically filed at any time before midnight central time on the filing deadline. Once a document has been accepted for filing by SOAH, an

electronically filed document is deemed filed on the date when transmitted to the filing party's electronic filing service provider, except:

(i) if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next business day; and

(ii) if a document requires a motion and an order allowing its filing, the document is deemed filed on the date that the motion is granted.

(G) Documents offered at a hearing.

(i) Any documents, including written testimony and exhibits, offered at a hearing that were not otherwise filed as part of the record shall be filed electronically.

(ii) If the judge sustained an evidentiary objection to a document offered at a hearing that resulted in exclusion of the document, then the excluded document shall be filed in accordance with this section only if there was an offer of proof.

(iii) Documents required to be filed by this section shall be filed electronically by not later than the next business day after the conclusion of the hearing at which they were offered, unless otherwise ordered by the judge.

(2) Filings by unrepresented parties.

(A) Parties who are not represented by an attorney may file documents using any of the following methods:

(i) electronically, in the manner and subject to the requirements specified in paragraph (b)(1) of this subsection and on SOAH's website, www.soah.texas.gov;

(ii) by mail addressed to SOAH at P.O. Box 13025, Austin, Texas 78711-3025;

(iii) by hand-delivery to SOAH at 300 West 15th Street, Room 504;

(iv) by fax to the appropriate SOAH office location; or

(v) at the SOAH field office where the case is assigned, using the field office address available at SOAH's website.

(B) All documents filed by unrepresented parties must:

(i) include the SOAH docket number and the name of the case in which it is filed;

(ii) include the party's mailing address, email address (if available), and telephone number;

(iii) comply with the requirements of §155.103 of this chapter if the document submitted for filing contains confidential information; and

(iv) comply with the requirements of §155.429 of this chapter if the document submitted for filing is an exhibit.

(C) Time of filing for documents not filed electronically. With respect to documents filed by mail, fax, or hand-delivery, the time and date of filing shall be determined by the file stamp affixed by SOAH. Documents received after 5:00 p.m. or when SOAH is closed shall be deemed filed the next business day.

(3) Filing Errors.

(A) Filers shall attempt, in good faith, to resolve filing and service errors in accordance with requisite standards of conduct and decorum towards counsel, opposing parties, the judge, and members of SOAH staff, including through timely correction and resubmission of any non-conforming documents.

(B) Non-conforming documents. SOAH's docketing department may not refuse to file a document that fails to conform with this rule. When a filed document fails to conform to this rule, the presiding judge or SOAH's docketing department may identify the errors to be corrected and state a deadline for the person, attorney, or agency to resubmit the document in conforming format.

(C) SOAH shall not be responsible for user or system errors of the filing party occurring in the electronic filing, transmission, or service of electronically filed documents.

(D) Technical failure. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the presiding judge. If the missed deadline is one imposed by SOAH's electronic filing rules, the filing party must be given a reasonable extension of time to complete the filing.

(4) For good cause, a judge may permit a party to file documents in paper or another acceptable form in a particular case.

(c) Method of filing in cases referred by the PUC.

(1) Except for exhibits offered at a prehearing conference or hearing, the original of all documents shall be filed at the PUC in accordance with the PUC rules.

(2) The party filing a document with the PUC (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve the judge with electronic or hard copies of the document upon request or order of the judge.

(3) The court reporter shall provide the transcript and exhibits to the judge at the same time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the PUC by the judge. If no court reporter was requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the PUC by the judge.

(d) Method of filing in cases referred by the TCEQ.

(1) Except for exhibits offered at a prehearing conference or hearing, the original of all documents shall be filed with the TCEQ's chief clerk in accordance with the TCEQ rules.

(2) The time and date of filing of these materials shall be determined by the file stamp affixed by the chief clerk, or as evidenced by the file stamp affixed to the document or envelope by the TCEQ mail room, whichever is earlier.

(3) The party filing a document with the TCEQ (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve the judge with a copy of the document by delivery to SOAH on the same day as the filing by electronically filing the document in accordance with the method and format required by subsection (b) of this section.

(4) The court reporter shall provide the transcript and exhibits to the judge at the time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the TCEQ by the judge. If no court reporter was requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the TCEQ by the judge.

(e) Method of filing in matters referred for mediation or mediator evaluation.

(1) Documents or communications relating to matters referred for mediation, or for evaluation by a mediator to determine if mediation is appropriate, shall not be filed with SOAH's docketing department, except to the extent the following items are required for SOAH's administration of alternative dispute resolution procedures:

(A) A request for ADR as described in §155.53 of this chapter, if the matter is initially referred for mediation only;

(B) An order of the judge referring a case for evaluation or mediation, if the matter was initially referred for a contested case hearing;

(C) Any letter or notice issued by a SOAH mediator, providing the parties with notice of assignment of a SOAH mediator and/or setting the date and time for the evaluation or mediation;

(D) Any motion or other request of the parties seeking cancellation of the evaluation or mediation;

(E) The mediator's report, which shall include only the information as described in §155.351(f)(3) of this chapter;

(F) The evaluator's written recommendation described in §155.351(b)(3) of this chapter; and

(G) Any administrative dismissal of the matter from SOAH's docket.

(2) Documents filed with SOAH's docketing department as described in paragraph (1) of this subsection are subject to public disclosure, and shall not contain any confidential information relating to the subject matter of the dispute.

(3) All other documents or communications relating to the mediation or evaluation, except those described in paragraph (1) of this subsection, must be provided to the SOAH mediator and/or exchanged between the parties in a manner approved by the SOAH mediator.

§155.103. Confidential Information.

(a) Records filed as part of a contested case proceeding at SOAH are presumed to be open to the public unless designated as confidential in accordance with this rule. A party filing or offering documents that contain confidential information and/or personal identifying information, as those terms are defined in §155.5, shall comply with this rule to prevent inadvertent public disclosure of such documents.

(b) Documents filed in confidential cases.

(1) Confidential cases. The records of certain contested case proceedings at SOAH are designated as confidential and closed to the public because of the necessity to comply with applicable confidentiality laws. Confidential proceedings include, but are not limited to:

(A) Tax proceedings subject to Tex. Gov't Code, §2003.104 referred by the Comptroller of Public Accounts;

(B) License suspension proceedings referred by the Child Support Division of the Office of the Attorney General;

(C) Child abuse and neglect central registry proceedings referred by the Health and Human Services Commission;

(D) Proceedings involving public retirement system benefits;

(E) Workers' compensation benefits proceedings referred by the Texas Department of Insurance, Division of Workers' Compensation; [~~and~~]

(F) Proceedings related to a petition for correction of a peace officer separation report referred by the Texas Commission on Law Enforcement, unless the petitioner resigned or was terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses; and[~~.~~]

(G) IDEA special education due process proceedings referred by the Texas Education Agency.

(2) Filing documents in confidential cases. In addition to the requirements of §155.101 of this chapter, documents filed in confidential cases shall be submitted for filing as follows:

(A) Each page of the document shall be conspicuously marked "CONFIDENTIAL" in bold print, 12-point or larger type.

(B) Attorneys, state agencies, and other governmental entities required to electronically file documents in the manner specified by §155.101 of this chapter shall designate all such documents as "confidential" within the party's electronic filing service provider.

(C) Unless otherwise permitted by order of the presiding judge, only unrepresented parties may file documents in confidential proceedings by mail, hand-delivery, or fax. If filed by mail, fax, or hand-delivery, documents submitted for filing shall be accompanied by an explanatory cover letter that includes:

(i) the docket number and style of the case;

(ii) the filing party's name, address, email address (if available), and telephone number; and

(iii) conspicuous markings identifying the filing as "CONFIDENTIAL" in bold print, 12-point or larger type.

(c) Confidential information filed in public cases.

(1) Redaction required. A person who files documents at SOAH in proceedings designated as open to the public, including exhibits, shall redact from the documents all confidential information and personal identifying information that is unnecessary for resolution of the case. Unless otherwise ordered by the judge, a party may not file an unredacted document containing confidential information or personal identifying information in a proceeding that is open to the public except as provided in subsection (c)(2) of this section.

(2) Confidential documents necessary for resolution of the case. A party may designate an entire document or exhibit as confidential in a proceeding that is open to the public only if:

(A) the entire document or exhibit contains confidential information or includes personal identifying information;

(B) redaction of the document or exhibit would remove confidential information or personal identifying information necessary to the resolution of the case; and

(C) no less restrictive means other than withholding the information from public disclosure will adequately or effectively protect the specific confidentiality interest asserted.

(D) A party may file a motion seeking an order for the protection of confidential information to be filed in a proceeding that is open to the public. Such motion should state with particularity:

(i) the identity of the movant and a brief, but specific description of the nature of the case and the records which are sought to be protected;

(ii) the applicable law or regulation requiring or authorizing the specific information at issue to be protected from public disclosure; and

(iii) any stipulation of the parties with respect to the use or disclosure of confidential information.

(3) Filing confidential documents. In addition to the requirements of §155.101 of this chapter, a party filing confidential documents in a proceeding accessible to the public shall submit documents for filing as follows:

(A) A party shall separate confidential documents or exhibits from non-confidential documents or exhibits at the time the records are submitted for filing. A party may not designate an entire series of documents or exhibits as confidential for purposes of filing if only a part of the records contains confidential information or personal identifying information.

(B) Each page of the document containing confidential information or personal identifying information shall be conspicuously marked "CONFIDENTIAL" in bold print, 12-point or larger type.

(C) Attorneys, state agencies, and other governmental entities required to electronically file documents in the manner specified by §155.101 of this chapter shall designate all such documents as "confidential" within the party's electronic filing service provider.

(D) Unless otherwise permitted by order of the presiding judge, only unrepresented parties may file documents in confidential proceedings by mail, hand-delivery, or fax. If filed by mail, fax, or hand-delivery, documents submitted for filing shall be accompanied by an explanatory cover letter that includes:

(i) the docket number and style of the case;

(ii) the filing party's name, address, email address (if available), and telephone number; and

(iii) conspicuous markings identifying the filing as "CONFIDENTIAL" in bold print, 12-point or larger type.

(E) Documents filed pursuant to a protective order issued by the judge may be designated as "CONFIDENTIAL, FILED UNDER SEAL" in bold print, 12-point or larger type.

(d) Challenging confidentiality designations. A party may file a motion to challenge the redaction or confidential filing of any information, or the judge can raise the issue. If a confidentiality designation is challenged, the designating party has the burden of showing that the document should remain confidential.

(1) If the judge determines that a confidential filing under subsection (c) of this section is appropriate, the judge may allow the filing to remain inaccessible to the public on SOAH's website, admit the information into the evidentiary record under seal, or employ appropriate protective measures.

(2) If the judge determines that a confidential filing under subsection (c) is not appropriate, the offering party must redact the confidential information or personal identifying information before resubmitting the document.

(e) Designation of a document as confidential in a SOAH proceeding is not determinative of whether that document would be subject to disclosure under Tex. Gov't Code Chapter 552 or other applicable law.

(f) In Camera Inspection. Documents presented for in camera inspection solely for the purpose of obtaining a ruling on their discoverability or admissibility shall not be filed, but shall be submitted only in the manner specified by the judge.

(g) Sanctions. The judge may issue an order imposing sanctions in the manner described in §155.157 of this chapter for the actions of a party in improperly filing or offering documents that contain confidential information or personal identifying information, or for actions that result in the public disclosure of information that is confidential by law.

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

Filed with the Office of the Secretary of State on May 19, 2021.

TRD-202102015
Shane Linkous
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: July 4, 2021
For further information, please call: (512) 475-4993

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SUBCHAPTER F. DISCOVERY

1 TAC §155.255

Statutory Authority

The rule amendments are proposed under Texas Government Code § 2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH.

Cross Reference to Statute

The proposed rule amendments affect Chapters 2001 and 2003 of the Texas Government Code.

§155.255. Written Discovery.

(a) Forms of written discovery. Unless otherwise provided by this section or ordered by the judge, parties may use the forms of written discovery provided by the TRCP, with the following modifications:

(1) Requests for production. Each party may serve no more than 25 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.

(2) Interrogatories. Each party may serve no more than 25 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

(3) Requests for admissions. Each party may serve no more than 25 requests for admissions. Requests for admissions may be used only to address jurisdictional facts or the genuineness of any documents served with the request.

(4) Requests for disclosure.

(A) The discovery rules of the TRCP requiring initial disclosures without awaiting a discovery request do not apply to a contested case under SOAH's jurisdiction, except as provided under subsection (a)(5) of this section or as may be ordered or allowed by the judge.

(B) A party may request disclosure of the following:

(i) the correct names of the parties to the contested case; the name, address, and telephone number of any potential parties;

(ii) a general description of the legal theories and the factual bases of the responding party's claims or defenses, if not already set forth in a pleading or document filed in the record of the proceeding at SOAH;

(iii) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

(iv) the statement of any person with knowledge of relevant facts (witness statement) regardless of when the statement was made; and

(v) a copy, or description by category and location, of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody or control and may use to support its claims or defenses, unless the use would be solely for impeachment. A request for disclosure made pursuant to this subsection is not considered a request for production.

(5) Expert Disclosures and Reports. Without awaiting a request for disclosure, a party must provide the following disclosures for any testifying expert at least 30 days before a scheduled hearing on the merits, unless otherwise ordered by the judge:

(A) the expert's name, address, and telephone number;

(B) the subject matter on which the expert will testify;

(C) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;

(D) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(i) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony;

(ii) the expert's current resume and bibliography;

(iii) the expert's qualifications, including a list of all publications authored in the previous 10 years;

(iv) a list of all other cases in which, during the previous four years, the expert testified as an expert at trial or by deposition; and

(v) a statement of the compensation to be paid for the expert's study and testimony in the case.

(E) If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert have not been recorded and reduced to tangible form, the judge may order these matters reduced to tangible form and produced, in addition to the deposition of the expert.

(b) Written discovery requests shall be served at least 30 days before the end of the discovery period, unless otherwise specified by this section or ordered by the judge.

(c) Response. Unless otherwise ordered by the judge or agreed by the parties, responses to written discovery requests shall be made within 30 days after receipt.

(1) Responses and documents produced in discovery shall be served upon the requesting party, and notice of service shall be given to all parties.

(2) A party producing documents in response to a discovery request must retain the original documents or exact duplicates of the original documents.

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 May 19, 2021.

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Shane Linkous
General Counsel
State Office of Administrative Hearings
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For further information, please call: (512) 475-4993

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER C. ALTERNATIVE RATE METHODS

The Public Utility Commission of Texas (commission) proposes repeal of existing 16 Texas Administrative Code (TAC) §24.75 and adoption of new 16 TAC §24.75, relating to Alternative Rate Methods. The commission also proposes new 16 TAC §24.76, relating to System Improvement Charge. These proposed rules will implement Texas Water Code (TWC) §13.183(c) enacted by the 86th Texas Legislature by establishing alternative ratemaking methodologies for water and sewer rates and establishing the requirements for a system improvement charge.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

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

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

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

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

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

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

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of

implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Emily Sears, Financial Analyst, Rate Regulation Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Sears has also determined that for each year of the first five years the proposed section is in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule will be higher quality, more affordable, and more reliable water or sewer service for customers; increased regionalization; and, more financially stable and technically sound water and sewer utilities. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking on July 16, 2021, if requested in accordance with Texas Government Code §2001.029. In light of the pending public emergency related to the coronavirus disease (COVID-19), this public hearing will be conducted remotely. The request for a public hearing must be received by July 9, 2021. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing. If a request for public hearing is received, commission staff will file in this project instructions on how a member of the public can participate in the hearing remotely.

Public Comments

At the time of this filing, the commission's rules requiring that pleadings or documents be physically filed are suspended. *See* Project Number 50664, *Issues Related to the State of Disaster for Coronavirus Disease 2019,* Second Order Suspending Rules filed on July 16, 2020. As long as this suspension remains in effect, comments may be filed through the interchange on the commission's website. If the suspension of these rules is lifted during the pendency of this project, comments may be filed by submitting 16 copies to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Comments may be filed by June 25, 2021. Reply comments may be filed by July 9, 2021. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 50322.

16 TAC §24.75

Statutory Authority

This repeal is proposed under Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, §13.183(c), which allows the commission to adopt rules related to specific alternative ratemaking methodologies for water and sewer rates.

Cross reference to statutes: Texas Water Code §§13.041(b) and 13.184(c).

§24.75. Alternative Rate Methods.

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 May 21, 2021.

TRD-202102045
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 4, 2021
For further information, please call: (512) 936-7244

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16 TAC §24.75

Statutory Authority

This new rule is proposed under Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, §13.183(c), which allows the commission to adopt rules related to specific alternative ratemaking methodologies for water and sewer rates.

Cross reference to statutes: Texas Water Code §§13.041(b) and 13.184(c).

§24.75. Alternative Ratemaking Methodologies.

(a) Purpose and application. This section establishes alternative ratemaking methodologies for utilities that provide water or sewer service. The commission may prescribe modified rate filing packages for these alternative ratemaking methodologies.

(b) Multi-step rates. Multi-step rates allow a utility to implement one or more rates over time without filing multiple rate applications. Multi-step rates must be established in accordance with this subsection.

(1) Multi-step rates must be established in a comprehensive rate proceeding under Texas Water Code (TWC) §§13.187, 13.1871, 13.18715, or 13.1872.

(2) The commission may establish multi-step rates on its own motion or at the request of a utility or any other interested party.

(3) Rates established in a comprehensive rate case under TWC §§13.187, 13.1871, 13.18715, or 13.1872 will replace any multi-step rates already in effect or previously approved by the commission to go into effect for that utility.

(4) Multi-step rates may be established when a utility transitions from use of flat rates for unmetered service to use of volumetric rates for metered service.

(A) Multi-step rates for a utility's transition to metered service must not be effective before the date that meters are installed and in operation for all of the utility's connections.

(B) If the utility is seeking multi-step rates to transition to the use of volumetric rates for metered service, the utility must state in its notice of intent to change rates that it is seeking permission to use multi-step rates to transition to metered service with volumetric usage rates.

(C) The utility must provide notice to its customers at least 30 days before the utility begins charging its volumetric usage rate for metered service and at least 30 days before implementation of each step of its commission-approved multi-step rate.

(5) Multi-step rates may be established when a utility transitions from multiple rate schedules for different systems or service areas to consolidated rate schedules for regional or system-wide rates.

(A) Different rates and a different timeline may be established for each step in the multi-step rates of each system or service area that is transitioning to a consolidated rate schedule provided that the final step for each system or service area is the same consolidated rate.

(B) If the utility is seeking multi-step rates to transition to consolidated rate schedules, the utility must state in its notice of intent to change rates that it is seeking permission to use multi-step rates to transition from multiple rate schedules for different systems or service areas to consolidated rate schedules for regional or system-wide rates.

(C) The utility must provide notice to its customers at least 30 days before implementation of each step of its commission-approved multi-step rate.

(6) Multi-step rates may be established to moderate the effects of a rate increase on customers or if other good cause exists.

(A) Different rates and a different timeline may be established for each step in the multi-step rates for each of a utility's systems or service areas provided that the final step for each system or service area is the same final rate.

(B) If the utility is seeking multi-step rates under this paragraph, the utility must state in its notice of intent to change rates that it is seeking permission to use multi-step rates.

(C) The utility must provide notice to its customers at least 30 days before implementation of each step of its commission-approved multi-step rate.

(7) The notice requirements in paragraphs (4) - (6) of this subsection do not replace the standard statement of intent notice requirements under TWC §§13.187, 13.1871, 13.18715. or 13.1872.

(8) The commission may place conditions on the implementation of a multi-step rate or on any step of a multi-step rate. For the purpose of ensuring just and reasonable rates, the commission may terminate a multi-step rate in a rate proceeding before completion of all steps of the multi-step rate.

(c) Cash needs method. The commission may approve use of the cash needs method to establish a utility's revenue requirement in a comprehensive rate proceeding for a Class C or Class D utility under TWC §13.18715 or §13.1872 if use of the method is necessary for the utility to provide continuous and adequate service or other good cause exists to support the use of the cash needs method. Under the cash needs method, the allowable components of cost of service are operating expenses, debt service costs, and an additional margin consisting of either an operating margin or an incremental revenue amount.

(1) Operating expenses. Only those operating expenses that are reasonable and necessary to provide service may be recovered, and these amounts must be based on the utility's test year expenses, adjusted for known and measurable changes.

(2) Debt-service costs. Debt service costs include principal and interest payments on the utility's debt.

(A) The debt must have reasonable terms and must finance facilities that will be used and useful in the provision of utility service.

(B) If required by the commission, Texas Water Development Board, other state or federal agency, or financial institution, debt-service costs may include amounts placed in a debt-service reserve account or an escrow account.

(C) Debt service costs may include owner-financed assets. Debt-service costs related to these assets must include debt repayments using a reasonable amortization schedule and must use the prime interest rate in effect at the time the application is filed.

(3) Additional margin. An additional margin consists of either an operating margin or an incremental revenue amount. A utility requesting an additional margin must provide an explanation for the magnitude of the additional margin it requests.

(A) If a utility requesting an additional margin in the form of an operating margin has filed its most recent required annual report and has a net plant (original cost of plant in service less accumulated depreciation) of less than 25 percent of the original cost of plant, an operating margin of up to five percent of operating expenses approved by the commission will be presumed reasonable and may be included in the utility's revenue requirement.

(B) An additional margin consisting of an incremental revenue amount is calculated by adding an incremental amount to the debt service costs described in paragraph (2)(A) of this subsection to achieve a reasonable total debt service coverage level above 1.0.

(4) Restrictions. Rates established using the cash needs method under this subsection may not be subsequently set using cost of service calculated under §24.41 of this title (related to Cost of Service) for any comprehensive rate change application filed within five years after the date of the commission's order establishing rates using the cash needs method. If, after this five-year period, the utility has a comprehensive rate change proceeding based on a cost of service calculated under §24.41 of this title, the utility's rate base must exclude an amount equal to the principal paid on the debt service during the time that rates based on the cash needs method were in effect.

(5) Subsequent acquisition. If a utility with rates established using the cash needs method is acquired by another utility while such rates are in effect, the acquiring utility is not subject to the restriction in paragraph (4) of this subsection on calculating cost of service. If the acquiring utility files a comprehensive rate change application based on a cost of service calculated under §24.41 of this title, the acquiring utility must exclude from rate base an amount equal to the principal paid on the debt service that was related to the acquired util-

ity during the time that rates based on the cash needs method were in effect.

(d) New customer classes. A utility may request the addition of a new customer class or classes as provided by this subsection.

(1) Application. An application for new customer classes under this section must include:

(A) a cost-of-service and rate design study;

(B) a definition for each proposed new customer class;

(C) demonstration that the characteristics of each proposed new customer class are sufficiently different from the characteristics of all existing and other proposed new customer classes for different rate treatment;

(D) a request for service from a customer in each proposed new customer class; and

(E) if the utility wants to extend the 18 month deadline to file a comprehensive rate case under paragraph (3) of this subsection, documentation that the revenues to be recovered from each new customer class will be less than ten percent of the utility's total annual revenue.

(2) Rates for new customer classes.

(A) The rates for each new customer class must be based on cost-of-service and rate design studies.

(B) On the effective date of the rates for each new customer class, common costs assigned to and recovered from the new customer classes must be removed from the rates of existing customer classes.

(3) Rate case requirement.

(A) A utility that has received commission approval for the creation of a new customer class or classes under this subsection must file a comprehensive rate case by filing a statement of intent under TWC §§13.187, 13.1871, 13.18715, or 13.1872 not later than 18 months from the date service begins to the new customer class or classes unless the utility has submitted documentation under paragraph (1)(E) of this subsection demonstrating that each new customer class represents less than ten percent of the utility's total annual revenue required.

(B) If the utility demonstrates to the commission that each new customer class represents less than ten percent of the utility's total annual revenue by submitting documentation under paragraph (1)(E) of this subsection, a comprehensive rate case is not required until the earlier of six months following the date on which the revenues of any of the new the customer classes equals or exceeds ten percent of the utility's total annual revenue or five years following the date service to the new customer class or classes begins. The utility must, as an attachment to its annual report filed under §24.129 (relating to Water and Sewer Utilities Annual Reports), annually update its demonstration to show that the revenues of each new customer class remain less than ten percent of the utility's total annual revenue.

(C) If a utility fails to provide an annual update that shows the annual revenue of each new customer class remains less than ten percent of the utility's total annual revenue, the utility must file a comprehensive rate case within the earlier of six months from the date its annual report was due under §24.129(a) or five years from the date service to the new customer class or classes began.

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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Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7244

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16 TAC §24.76

Statutory Authority

This new rule is proposed under Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, §13.183(c), which allows the commission to adopt rules related to specific alternative ratemaking methodologies for water and sewer rates.

Cross reference to statutes: Texas Water Code §§13.041(b) and 13.184(c).

§24.76. System Improvement Charge.

(a) Purpose. This section establishes the requirements for a system improvement charge to ensure timely recovery of infrastructure investment.

(b) Definitions. In this section, the following words and terms have the following meanings unless the context indicates otherwise.

(1) Eligible plant -- Plant properly recorded in the National Association of Regulatory Utility Commissioners System of Accounts, accounts 304 through 339 for water utility service or accounts 354 through 389 for sewer utility service.

(2) System improvement charge -- A charge to recover the cost of a utility's eligible plant that is used and useful and the costs of which are not already included in the utility's rates.

(c) System improvement charge.

(1) A utility must have only one system improvement charge in effect for water and one system improvement charge in effect for sewer for each of its rate schedules at any time.

(2) A utility may apply to establish or amend one or more system improvement charges in accordance with the requirements of this section. A utility must not adjust its rates under this section more than once each calendar year. A utility that is applying to establish or amend multiple system improvement charges in a calendar year must do so in a single application.

(3) A utility may not apply to establish or amend a system improvement charge while it has a comprehensive rate proceeding under TWC §§13.187, 13.1871, 13.18715, or 13.1872 pending before the commission.

(4) A utility may not apply to establish or amend a system improvement charge until 12 months after a commission order establishing rates in a proceeding under TWC §§13.187, 13.1871, 13.18715, or 13.1872 is final and appealable.

(5) If a utility with a pending application to establish or amend a system improvement charge files an application to change rates under TWC §§13.187, 13.1871, 13.18715, or 13.1872, or the commission initiates a rate change review under TWC §13.186, the utility will be deemed to have withdrawn its application to establish or amend a system improvement charge and the presiding officer must dismiss the application.

(6) The filing of applications as allowed by this section is limited to a specific quarter of the calendar year, and is based on the last two digits of a utility's certificate of convenience and necessity (CCN) number as outlined below, unless good cause is shown for filing in a different quarter. For a utility holding multiple CCNs, the utility may file an application in any quarter for which any of its CCN numbers is eligible.

(A) Quarter 1 (January-March): CCNs ending in 00 through 27;

(B) Quarter 2 (April-June): CCNs ending in 28 through 54;

(C) Quarter 3 (July-September): CCNs ending in 55 through 81; and

(D) Quarter 4 (October-December): CCNs ending in 82 through 99.

(7) On its own motion or at the request of the utility or any other interested party, the commission may approve a system improvement charge as a multi-step rate increase if a multi-step rate increase is already in effect or if necessary to limit the utility's annual total revenue increase to no more than 10 percent.

(d) Application for a system improvement charge. An application to establish or amend a system improvement charge must include the following:

(1) a description of the eligible plant for which cost recovery is sought through the system improvement charge, including the project or projects included in the request and an explanation of how each project has improved or will improve service;

(2) a calculation of the system improvement charge in accordance with subsection (f) of this section and all supporting calculations and assumptions for each component of the system improvement charge;

(3) information that sufficiently supports the eligible cost, such as invoices, receipts, and direct testimony, and that sufficiently addresses the exclusion of costs for plant provided by explicit customer agreements or funded by customer contributions in aid of construction;

(4) the utility's most recent annual report filed with the commission, which must be the annual report most recently due for filing; and

(5) an affidavit confirming that the application meets the requirements of this section.

(e) Calculation of the system improvement charge. The system improvement charge must be calculated using the following formula: SIC = (Eligible Cost * ROR) + Federal Income Taxes + Depreciation + ad valorem taxes + other revenue related taxes, where:

(1) SIC = the system improvement charge.

(2) Eligible Cost = the original costs of eligible plant that have not been included in the calculation of a rate other than the system improvement charge, less any accumulated depreciation and costs for plant provided by explicit customer agreements or funded by customer contributions in aid of construction.

(3) Accumulated depreciation = depreciation accumulated for eligible plant after the date the eligible plant was placed in service.

(4) ROR = after-tax rate of return as defined in paragraph (9) of this subsection.

(5) Federal Income Taxes = current annual federal income tax, as related to eligible costs.

(6) Depreciation = current annual depreciation expense for the eligible plant.

(7) Ad Valorem Taxes = taxes based on the assessed value of the eligible plant.

(8) Other Revenue Related Taxes = any additional taxes resulting from the utility's increased revenues related to the SIC.

(9) The after-tax rate of return is one of the following:

(A) if the final order approving the rate of return was filed less than three years before the application for a system improvement charge was filed, the after-tax rate of return is the one approved by the commission in the utility's last base-rate case; or

(B) if the final order approving the rate of return was filed three years or more before the application for a system improvement charge was filed, the after-tax rate of return for settled and fully litigated rate cases is the average of the commission's approved rates of return for water and sewer utilities over the three years immediately preceding the filing of the system improvement charge application.

(f) Notice. By the first business day after it files its application, the utility must send notice of its system improvement charge application to all affected ratepayers by first class mail, e-mail (if the customer has agreed to receive communications electronically), bill insert, or hand delivery. The utility must include in the notice the docket number for the utility's system improvement charge proceeding, the intervention deadline, and a brief explanation of how an affected ratepayer can intervene in the system improvement charge proceeding and how intervention differs from protesting a rate increase. The intervention deadline is 25 days from the date service of notice is complete.

(g) Commission processing of application. Upon the filing of an application to establish a system improvement charge, the presiding officer must set a procedural schedule that will enable the commission to issue a final order within 120 days after the application is determined to be sufficient, if no hearing is requested.

(1) For good cause or by agreement of the parties, the presiding officer may set a schedule that will not enable issuance of a final order within 120 days after the application is determined to be sufficient. The deadlines established by the presiding officer will be extended as provided in this subsection.

(2) After an application is determined to be sufficient, the applicant must respond to requests for information within 10 days. An applicant's failure to timely respond to requests for information constitutes good cause for extending the deadline for final action one day for each day that a response exceeds 10 days.

(3) A request by an intervenor for hearing must be filed within 25 days after the application is determined to be sufficient. A request for hearing must state with specificity the issues to be addressed.

(4) Unless an intervenor requests a hearing, commission staff must submit a recommendation on the application or request a hearing not later than 45 days after the application is determined to be sufficient unless commission staff requests additional time, not to exceed another 15 days unless good cause exists for a later date. If commission staff is granted additional time, the deadline for final action is extended day for day for each day of additional time.

(5) If a hearing on the application is requested, the application will be referred to the State Office of Administrative Hearings (SOAH) for an evidentiary hearing. The presiding officer must set a procedural schedule that will enable the commission to issue a final order within 120 days after the application is referred to SOAH. For good cause, the presiding officer may set a procedural schedule that will not

enable the commission to issue a final order within 120 days after the application is determined to be sufficient.

(h) Scope of proceeding. The issue of whether eligible costs included in an application for a system improvement charge or an amendment to a system improvement charge are prudent, reasonable, or necessary, will not be addressed in a proceeding under this section unless the presiding officer finds that good cause exists to address these issues.

(i) System improvement charge reconciliation. Costs recovered through a system improvement charge are subject to reconciliation in the utility's next comprehensive rate case. Any amounts recovered through the system improvement charge that are found to have been unreasonable, unnecessary, or imprudent, plus the corresponding return and taxes, must be refunded with carrying costs. The utility must pay to its customers carrying costs on these amounts calculated using the same rate of return that was applied to the recovered costs in establishing the system improvement charge until the date the rates approved utility's next comprehensive rate case are effective. Thereafter, carrying costs must be calculated using the utility's rate of return authorized in the comprehensive rate case.

(j) Requirement to file a rate case. A utility must file a comprehensive rate case under TWC §§13.187, 13.1871, 13.18715, or 13.1872 within the following times from the date the commission files an order approving the system improvement charge.

(1) Four years for a utility that was a Class A utility at the time of the order.

(2) Six years for a utility that was a Class B utility at the time of the order.

(3) Eight years for a utility that was a Class C or Class D utility at the time of the order.

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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Andrea Gonzalez
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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT SUBCHAPTER B. POWERS AND RESPONSIBILITIES

16 TAC §60.22

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter B, §60.22, General Powers and Duties of the Department and the Executive Director, regarding the issuance of emergency licenses by the Department. These proposed changes are referred to as the "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC, Chapter 60, Procedural Rules of the Commission and the Department, implement Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation.

On March 13, 2020, the Governor of Texas issued a disaster proclamation under Texas Government Code §418.014 certifying that COVID-19 poses an imminent threat of disaster for all counties in the State of Texas. The Department implemented safety measures and work from home initiatives to minimize the effects of COVID-19 on agency operations. However, due to the limited availability of staff and several positive tests for COVID-19 among Department staff, delays in Department operations occurred. To minimize the impacts of these delays, the Texas Commission of Licensing and Regulation (Commission) adopted rules on an emergency basis to permit the executive director of the Department to issue emergency licenses. The most recent emergency rule at 16 TAC §60.22 was adopted on May 6, 2021, to be effective on May 22, 2021. The text of this proposed rule is identical to the text of the emergency rule adopted on May 6, 2021.

The Department issues licenses for many different professions that serve essential roles for the people of Texas. Delays in license renewal may prevent certain license holders from providing essential public health services or construction and repair services necessary for health and safety. Additionally, license holders cannot legally provide services after the expiration of their license, placing these individuals in the precarious position of violating the law to continue employment during a disaster.

Based upon the experience the Department gained during the COVID-19 disaster and subsequent emergency rulemakings, the Department has determined that a permanent rule is necessary and will help to minimize delays and disruption in future disasters. The proposed rule addresses these issues by permitting the Department's executive director to issue emergency licenses under Chapter 51 of the Occupations Code whenever a disaster has been declared by the governor. Adopting the identical text of the emergency rule as this permanent rule will ensure that policies the Department has already developed can remain in place as needed for the current COVID-19 disaster, and will be available for any future disaster.

SECTION-BY-SECTION SUMMARY

The proposed rule amends §60.22 by creating new subsection (e) to permit the executive director to issue emergency licenses under Texas Occupations Code §51.408 for any license that expires during a state of disaster declared by the governor, or the following recovery period. The proposed rule also permits the executive director to implement policies as necessary to administer this subsection, and clarifies that the holder of an emergency license is not required to post or display the emergency license.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

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

Department does not anticipate printing and issuing emergency licenses. Instead, the Department would update its website so that license holders and the public may verify that an emergency license has been issued.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule. The proposed rule does not affect fees to be paid to the Department.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be that the proposed rule would authorize the Department's executive director to issue an emergency license to license holders whose license expires during a declared state of disaster or the following recovery period. If the Department should experience any delay in issuing license renewals because of the disaster, the proposed rule and emergency licenses would ensure license holders do not experience a lapse in licensure due to no fault of their own. Additionally, certain Department licensees provide essential public health services or construction and repair services necessary for health and safety, and emergency licenses authorized by this rule would allow licensees to continue to provide these services while waiting for their regular license to be renewed.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no cost or fee associated with issuing emergency licenses under the proposed rule, and the license holder is not required to post or display the emergency license.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

4. The proposed rule does not require an increase or decrease in fees paid to the agency.

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

6. The proposed rule does expand, limit, or repeal an existing regulation. Existing 16 TAC §60.22 is expanded to include an additional subsection granting the Department's executive director the authority to issue emergency licenses as necessary following a disaster declaration by the governor.

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

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

Comments on the proposed rule may be submitted electronically on the Department's website at https://ga.tdlr.texas.gov:1443/form/gcerules; by facsimile to (512) 475-3032; or by mail to 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.*

STATUTORY AUTHORITY

The rule is proposed under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement that chapter.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposed rule.

§60.22 General Powers and Duties of the Department and the Executive Director.

(a) The Executive Director shall have primary responsibility to manage the operations and administration of the Department as provided by Texas Occupations Code Chapter 51 and other applicable law, including but not limited to:

(1) issuing licenses;

(2) resolving complaints;

(3) conducting investigations and inspections;

(4) imposing agreed order sanctions and administrative penalties; and

(5) administering exams.

(b) The Executive Director may approve agreed orders in contested cases and shall have authority to issue other orders as provided by law or as delegated by the Commission.

(c) The Executive Director may propose rules for publication in the *Texas Register* as delegated by the Commission.

(d) The Executive Director may implement any emergency orders or proclamations issued by the Governor to suspend or amend existing statutes and rules. The Executive Director will notify the Commission of the Department's actions to comply with the Governor's emergency orders or proclamations.

(e) For any license that expires during a state of disaster declared by the governor under Texas Government Code, Chapter 418, or the following recovery period, the Executive Director may issue to the license holder an emergency license under Texas Occupations Code §51.408. The Executive Director may implement policies as necessary to administer this subsection. The holder of an emergency license issued under this subsection is not required to post or display the emergency license.

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

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671

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PART 8. TEXAS RACING COMMISSION

CHAPTER 321. PARI-MUTUEL WAGERING

SUBCHAPTER C. REGULATION OF LIVE WAGERING

DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

16 TAC §321.321

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §321.321, Fortune Pick (n). The proposed amendments would allow for a unique winning ticket option along with the current unique winning wager option and some additional flexibility for racetrack associations in how they offer this wager.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing the amendments. Enforcing or administering the amendments does not have foreseeable implications relating to cost or revenues of the state or local governments.

ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit will be additional options to racetracks and patrons. There is no probable economic cost to persons required to comply with the amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed amendments are in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; the amendments do not require an increase or decrease in fees paid to the agency; the amendments do not create new regulations; the amendments do not expand existing regulations; the amendments do not repeal existing regulations; the amendments do not increase or decrease the number of individuals subject to the rule's applicability; and the amendments are not expected to have an adverse effect on this state's economy.

EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

IMPACT ON EMPLOYMENT CONDITIONS

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

There will be no adverse effect on rural communities as a result of the proposed amendments. Because the agency has determined that the proposed amendments will have no adverse economic effect on rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that these proposed amendments do not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed amendments will not affect private real property and will not restrict, limit, or impose a burden on an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings

impact assessment is not required, as provided by Government Code §2007.043.

EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed amendments will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

PUBLIC COMMENTS

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* by mail to Robert Elrod, Public Information Officer for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, by e-mail to info@txrc.texas.gov, by telephone to (512) 833-6699, or by fax to (512) 833-6907.

STATUTORY AUTHORITY

The amendments are proposed under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the proposed amendments.

§321.321 Fortune Pick (n)

(a) (No change.)

(b) The fortune pick (n) pari-mutuel pool consists of amounts contributed for a selection to win only in each of six, seven, eight, nine, or 10 races designated by the association. After designating the number of races comprising the fortune pick (n), the association may not change the number during a race meeting without prior written approval of the executive director [~~secretary~~].

(c) Unique winning wager, as used in this section, shall be defined as having occurred when the total amount wagered on a winning combination selecting the first place finisher in each of the selected fortune pick (n) contests, based upon the official order of finish, is equal to the minimum allowable wager.

(d) Unique winning ticket, as used in this section, shall be defined as having occurred when there is one and only one ticket that correctly selected the first place finisher in each of the selected fortune pick (n) contests, based on the official order of finish, to be verified by the unique serial number assigned by the totalisator system that issued the winning ticket.

(e) [~~(c)~~] A person purchasing a fortune pick (n) ticket shall designate the winning animal in each of the races comprising the fortune pick (n). The association shall issue to the purchaser of a fortune pick (n) ticket a ticket that reflects each of the purchaser's selections.

(f) [~~(d)~~] A fortune pick (n) ticket is a contract between the holder of the ticket and the association and the ticket constitutes acceptance of this section. The association, totalisator company, and the State of Texas are not liable to a person for a fortune pick (n) ticket that is not a winning ticket under this section or for a fortune pick (n) ticket that is not delivered.

(g) [~~(e)~~] A coupled entry or mutuel field in a race that is part of the fortunate pick (n) races shall race as a single betting interest for the purpose of mutuel pool calculations and payoffs to the public.

(h) [~~(f)~~] The fortune pick (n) pool shall be distributed as provided by this section. The net pool in the fortune pick (n) pool is divided into a major pool and a minor pool. The association may designate the major pool percentage of the net amount wagered on the fortune pick (n). The remaining percentage constitutes the minor pool. The association shall notify the executive director [~~secretary~~] in writing before the beginning of each race meeting of its designation regarding the division between the major and minor pools. After designating the division between the major and minor pools, an association may not change the division during a race meeting without prior written approval of the executive director [~~secretary~~].

(i) Prior to the start of a race meet at which an association will offer a fortune pick (n) wager, the association shall notify the executive director of its election to require a unique winning wager or a unique winning ticket, along with any specifics within that option for which it seeks approval. The association may not change fortune pick (n) options for the meet once testing has been performed based on those selections.

[~~(g) Fortune pick (n) with minor pool and carryover with unique wager.~~]

(j) [~~(1)~~] The [~~the~~] entire net fortune pick (n) pool and carryover, if any, shall be distributed to the holder of a unique winning wager or unique winning ticket, as appropriate depending on the association's election in subsection (i) of this section. [~~selecting the first place finisher in each of the selected fortune pick (n) contests, based upon the official order of finish.~~] If there is no unique winning wager or unique winning ticket, as appropriate based on the association's election [~~selecting the first place finisher in all fortune pick (n) contests~~], the minor share of the net fortune pick (n) pool shall, at the discretion of the association and with the prior approval of the executive director, be distributed either as a single price pool to those who selected the first place finisher in the greatest number of fortune pick (n) contests or as a single price pool to those who selected the first-place finisher in all of the pick (n) contests, based on the official order of finish,[~~;~~] and the major share shall be added to the carryover. [~~;~~]

(k) [~~(2)~~] If [~~if~~] the fortune pick (n) minor pool cannot be distributed in accordance with subsection (j) of this section [~~paragraph (1) of this subsection~~], the minor pool shall be combined with the major pool and added to the previous day's carryover. The entire pool plus carryover shall be carried forward to the next fortune pick (n) pool.

(l) [~~(h)~~] If the association elects to designate the major pool at one hundred percent (100%) and the minor pool at zero percent (0%), the entire net fortune pick (n) pool and carryover, if any, shall be distributed to the holder of a unique winning wager or unique winning ticket, as appropriate based on the association's election in subsection (i) of this section. [~~selecting the first place finisher in each of the selected fortune pick (n) contests, based upon the official order of finish.~~] If there is no unique winning wager or unique winning ticket, as appropriate [~~selecting the first place finisher in all fortune pick (n) contests~~], the entire pool shall be combined with the previous day's carryover. The entire pool plus carryover shall be carried forward to the next fortune pick (n) pool.

[~~(i) Unique wager, as used in this rule, shall be defined as having occurred when the total amount wagered on a winning combination selecting the first place finisher in each of the selected fortune pick (n) contests, based upon the official order of finish, is equal to the minimum allowable wager.~~]

(m) [~~(j)~~] If there is a dead heat for first in any of the fortune pick (n) contests involving:

(1) contestants [~~Contestants~~] representing the same betting interest, the fortune pick (n) pool shall be distributed as if no dead heat occurred.

(2) contestants [~~Contestants~~] representing two or more betting interests, the fortune pick (n) pool shall be distributed as a single

price pool with each unique winning wager receiving an equal share of the profit.

(n) [~~(k)~~] Should a betting interest in any of the fortune pick (n) contests be scratched, excused, or determined to be a non-starter, the actual favorite, as shown by the largest amount wagered in the win pool at the time of the start of the race, will be substituted for the non-starting selection for all purposes, including pool calculations and payoffs. If there are two or more favorites in the win pool, both favorites will be substituted for the non-starting selection.

(o) [~~(l)~~] Except as otherwise provided by this subsection, if one or more races in the fortune pick (n) are canceled or declared a "no race", the amount contributed to the major pool for that performance shall be added to the minor pool for that performance and distributed as an extra amount in the minor pool to the holders of the tickets that designate the most winners in the remaining races. All contributions to the major pool from prior performances shall remain in the major pool, to be carried forward to the next performance to be paid in the major pool for that performance. If the stewards or racing judges cancel or declare a "no race" in three or more of the races comprising a fortune pick six, seven, or eight, four or more of the races comprising the fortune pick nine, or five or more of the races comprising the fortune pick 10, the fortune pick (n) is canceled and the association shall refund all fortune pick (n) tickets. A person may not win the major pool unless the person holds a fortune pick (n) ticket that correctly designates the official winners of all the scheduled races comprising the fortune pick (n) for that performance unless it is on the last performance of the race meeting or a designated mandatory payout performance. On the last performance of a race meeting or on a designated mandatory payout performance, if one or more races comprising the fortune pick (n) are canceled or declared a "no race", the major pool and the minor pool for that performance shall be combined with the prior performance major pool and be paid to those holders of tickets who correctly designated the most winners of the remaining races of the fortune pick (n). If on the last performance of the race meeting or on a designated mandatory payout performance the major pool and the minor pool cannot be distributed in accordance with this subsection then the major and minor pool shall be handled in accordance with subsection (r) [~~(n)~~] of the section.

(p) [~~(m)~~] When the condition of the turf course warrants a change of racing surface in any of the races open to fortune pick (n) wagering, and such change has not been made known to the betting public prior to the close of wagering for the first fortune pick (n) race, the Stewards shall declare the changed races a "no contest" for fortune pick (n) wagering purposes and the pool shall be distributed in accordance with subsection (n) [~~(k)~~] of this section. Following the designation of a race as a "no contest", no tickets shall be sold selecting a horse in such "no contest" race.

(r) [~~(n)~~] If on the last performance of the race meeting or on a designated mandatory payout performance the major pool is not distributable under any previous subsection [~~(g) or (h)~~] of this section, the major pool and all money carried forward into that pool from previous performances shall be combined with the minor pool and distributed to the holders of tickets correctly designating the most winners of the races comprising the fortune pick (n) for that performance.

(s) [~~(o)~~] If the final or designated mandatory payoff performance is canceled or the pool has not been distributed in accordance with this section, the pool shall be deposited in an interest-bearing account approved by the executive director [~~secretary~~]. The pool plus all accrued interest shall then be carried over and added to a fortune pick (n) pool with the same number of (n) contests in a subsequent race meeting within the following twelve months, on a date and performance designated by the association with the approval of the executive director [~~secretary~~]. The designation of the date and performance must be made prior to the start of the association's next live racing meet.

(t) [~~(p)~~] Except for refunds required by this section, a fortune pick (n) ticket may not be sold, exchanged, or canceled after the close of wagering on the first of the fortune pick (n) races.

(u) [~~(q)~~] A person may not disclose the number of tickets sold in the fortune pick (n) pool or the number or amount of tickets selecting winners of the races comprising the fortune pick (n) until the results of the last race comprising the fortune pick (n) are official. The totalisator equipment shall be programmed or constructed to suppress the publication or printing of any such information, except the total number of dollars wagered in the fortune pick (n), until the results of the last race comprising the fortune pick (n) are official.

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 May 18, 2021.

TRD-202101998
Chuck Trout
Executive Director
Texas Racing Commission
Earliest possible date of adoption: July 4, 2021
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

The Texas Education Agency (TEA) proposes amendments to §§89.1005, 89.1035, 89.1040, 89.1050, 89.1070, 89.1121, and 89.1131, concerning special education services. The proposed amendments would make updates related to eligibility determination for specific learning disabilities and provisions for students who are eligible for special education and related services who enroll in local educational agencies (LEAs) during the summer. The proposed amendments would also make conforming edits related to funding for special education; update terminology to implement Senate Bill (SB) 281, 86th Texas Legislature, 2019; and update cross references.

BACKGROUND INFORMATION AND JUSTIFICATION: The rules in Chapter 89, Subchapter AA, address provisions for special education services, including general provisions, clarification of federal regulations and state law, and dispute resolution. Legislation from the 86th Texas Legislature, 2019, requires that some of the rules in the subchapter be revised. Other rules require revision to provide clarification and to clearly express the state requirements aligned with federal regulations. Specifically, the proposed amendments would update the rules as follows.

Division 1, General Provisions

Section 89.1005, Instructional Arrangements and Settings, would be amended to change references from "auditory impairment" to "deaf or hard of hearing" based on statutory changes made to Texas Government Code (TGC), §392.002, by SB 281, 86th Texas Legislature, 2019.

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

Section 89.1035, Age Ranges for Student Eligibility, would be amended to change references from "auditory impairment" to "deaf or hard of hearing" based on statutory changes made to TGC, §392.002, by SB 281.

Section 89.1040, Eligibility Criteria, would be amended to more clearly express the state requirements for identifying students with specific learning disabilities (SLD) that are aligned with federal requirements. The proposed changes would revise wording and clarify the psychological process practices used in identifying an SLD as allowed for under federal regulation. Section 89.1040 would also be amended to change references from "auditory impairment" to "deaf or hard of hearing" based on statutory changes made to TGC, §392.002, by SB 281.

Section 89.1050, The Admission, Review, and Dismissal Committee, would be amended to clarify how LEAs should provide services to students who are eligible for special education and related services when they enroll in an LEA during the summer. The proposed changes would specify that students with disabilities are to receive all individualized education program (IEP) services starting the first day of school if they enrolled in an LEA during the summer. Additionally, references from "auditory impairment" to "deaf or hard of hearing" would be made based on statutory changes made to TGC, §392.002, by SB 281.

Section 89.1070, Graduation Requirements, would be amended to update cross references in subsections (g) and (h).

Division 4, Special Education Funding

Section 89.1121, Distribution of State Funds, would be amended to change references from "auditory impairment" to "deaf or hard of hearing" based on statutory changes made to TGC, §392.002, by SB 281. The proposed amendment would also make conforming changes to the formula for funding special education to align with Texas Education Code, §48.102.

Division 5, Special Education and Related Service Personnel

Section 89.1131, Qualifications of Special Education, Related Service, and Paraprofessional Personnel, would be amended to change references from "auditory impairment" to "deaf or hard of hearing" based on statutory changes made to TGC, §392.002, by SB 281.

FISCAL IMPACT: Matthew Montaño, deputy commissioner for special populations, 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 TGC, §2001.022.

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand existing regulations by clarifying requirements in §89.1040 related to the evaluation and determination of specific learning disabilities and by providing additional clarification in §89.1050(j) for LEAs regarding requirements related to the implementation of the IEPs of students who enroll during the summer.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Montaño has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is based on current law and providing school districts and families with clarifications regarding special education requirements. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins June 4, 2021, and ends July 5, 2021. Public hearings to solicit testimony and input on the proposal will be held at 8:30 a.m. on June 15 and 17, 2021, via Zoom. The public may participate in either hearing virtually by linking to the hearing at https://us02web.zoom.us/j/85663466293 or joining by SIP at 85663466293@zoomcrc.com. The public may attend one or both hearings. Anyone wishing to testify at one of the hearings must sign in between 8:15 a.m. and 9:00 a.m. on the day of the respective hearing. Each hearing will conclude once all who have signed in have been given the opportunity to comment. Each individual's comments are limited to three minutes, and each individual may comment only once. Both hearings will be recorded and made available publicly.

Parties who are interested in providing written testimony in addition to, or in lieu of, in-person testimony are encouraged to send written testimony to spedrule@tea.texas.gov. Questions about the hearings should be directed to SpecialEducation@tea.texas.gov. Additionally, persons requiring special accommodations, including the use of an interpreter, should

notify TEA by emailing SpecialEducation@tea.texas.gov at least five working days before the respective hearing.

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/.

DIVISION 1. GENERAL PROVISIONS

19 TAC §89.1005

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §28.025, which establishes requirements related to high school graduation and academic achievement records; TEC, §29.001, which establishes general statutory authority for the state to develop, implement, and monitor a statewide plan for special education; TEC, §29.003, which establishes state-specific criteria related to eligibility requirements for special education; TEC, §48.102, which establishes formulas for funding special education programs; Texas Government Code, §392.002, as amended by Senate Bill 281, 86th Texas Legislature, 2019, which establishes requirements related to the use of person first respectful language; 34 Code of Federal Regulations (CFR), §300.8, which establishes definitions of eligibilities under special education; 34 CFR, §300.100, which establishes general authority for the statewide plan for special education; 34 CFR, §300.307, which establishes requirements related to criteria that states must adopt for determining eligibility for specific learning disabilities; 34 CFR, §300.308, which establishes requirements related to who determines whether a student has a specific learning disability; 34 CFR, §300.309, which establishes requirements related to eligibility criteria for specific learning disabilities; 34 CFR, §300.310, which establishes requirements related to the use of observations in the evaluation process for determining eligibility for specific learning disabilities; 34 CFR, §300.311, which establishes requirements related to the documentation of the determination of eligibility for specific learning disabilities; and 34 CFR, §300.323, which establishes requirements related to the implementation of students' individualized education programs and requirements related to transfer students.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§28.025, 29.001, 29.003, and 48.102; Texas Government Code, §392.002, as amended by Senate Bill 281, 86th Texas Legislature, 2019; and 34 Code of Federal Regulations, §§300.8, 300.100, 300.307-300.311, and 300.323.

§89.1005. Instructional Arrangements and Settings.

(a) - (c) (No change.)

(d) The appropriate instructional arrangement for students from birth through the age of two with visual [~~and/or auditory~~] impairments or who are deaf or hard of hearing shall be determined in accordance with the IFSP, current attendance guidelines, and the agreement memorandum between the Texas Education Agency (TEA) and Texas Health and Human Services Commission Early Childhood Intervention Services.

(e) - (f) (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 May 24, 2021.

TRD-202102082
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: July 4, 2021
For further information, please call: (512) 475-1497

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

19 TAC §§89.1035, 89.1040, 89.1050, 89.1070

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §28.025, which establishes requirements related to high school graduation and academic achievement records; TEC, §29.001, which establishes general statutory authority for the state to develop, implement, and monitor a statewide plan for special education; TEC, §29.003, which establishes state-specific criteria related to eligibility requirements for special education; TEC, §48.102, which establishes formulas for funding special education programs; Texas Government Code, §392.002, as amended by Senate Bill 281, 86th Texas Legislature, 2019, which establishes requirements related to the use of person first respectful language; 34 Code of Federal Regulations (CFR), §300.8, which establishes definitions of eligibilities under special education; 34 CFR, §300.100, which establishes general authority for the statewide plan for special education; 34 CFR, §300.307, which establishes requirements related to criteria that states must adopt for determining eligibility for specific learning disabilities; 34 CFR, §300.308, which establishes requirements related to who determines whether a student has a specific learning disability; 34 CFR, §300.309, which establishes requirements related to eligibility criteria for specific learning disabilities; 34 CFR, §300.310, which establishes requirements related to the use of observations in the evaluation process for determining eligibility for specific learning disabilities; 34 CFR, §300.311, which establishes requirements related to the documentation of the determination of eligibility for specific learning disabilities; and 34 CFR, §300.323, which establishes requirements related to the implementation of students' individualized education programs and requirements related to transfer students.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§28.025, 29.001, 29.003, and 48.102; Texas Government Code, §392.002, as amended by Senate Bill 281, 86th Texas Legislature, 2019; and 34 Code of Federal Regulations, §§300.8, 300.100, 300.307-300.311, and 300.323.

§89.1035. Age Ranges for Student Eligibility.

(a) (No change.)

(b) In accordance with the Texas Education Code (TEC), §§29.003, 30.002(a), and 30.081, a free appropriate public education must be available from birth to students with visual [~~or auditory~~] impairments or who are deaf or hard of hearing.

§89.1040. Eligibility Criteria.

(a) - (b) (No change.)

(c) Eligibility definitions.

(1) (No change.)

(2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness as stated in 34 CFR, §300.8(c)(2). In meeting the criteria stated in 34 CFR, §300.8(c)(2), a student with deaf-blindness is one who, based on the evaluations specified in subsection [~~subsections~~] (c)(3) and (12) [~~(c)(12)~~] of this section:

(A) meets the eligibility criteria for a student who is deaf or hard of hearing [~~auditory impairment~~] specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;

(B) (No change.)

(C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for a student who is deaf or hard of hearing [~~auditory impairment~~] or for visual impairment, but the combination of such losses adversely affects the student's educational performance; or

(D) (No change.)

(3) Deaf or hard of hearing [~~Auditory impairment~~]. A student who is deaf or hard of hearing [~~with an auditory impairment~~] is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), or for hearing impairment as stated in 34 CFR, §300.8(c)(5). The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on being deaf or hard of hearing [~~an auditory impairment~~] must include an otological examination performed by an otolaryngologist or by a licensed medical doctor, with documentation that an otolaryngologist is not reasonably available, and an audiological evaluation performed by a licensed audiologist. The evaluation data must include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.

(4) - (8) (No change.)

(9) Specific learning [~~Learning~~] disability.

(A) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; intellectual disability; emotional disturbance; or environmental, cultural, or economic disadvantage.

(B) A student with a specific learning disability is one who:

(i) has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability as stated in 34 CFR, §300.8(c)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311;

(ii) when provided with learning experiences and instruction appropriate for the student's age or state-approved grade-level standards as indicated by performance on multiple measures such as in-class tests, grade average over time (e.g. six weeks or semester), norm- or criterion-referenced tests, and statewide assessments, does not achieve adequately for the student's age or to meet state-approved grade-level standards in one or more of the following areas:

(I) oral expression;

(II) listening comprehension;

(III) written expression;

(IV) basic reading skill;

(V) reading fluency skills;

(VI) reading comprehension;

(VII) mathematics calculation; or

(VIII) mathematics problem solving;

(iii) meets one of the following criteria:

(I) does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in clause (ii)(I) - (VIII) of this subparagraph when using a process based on the student's response to scientific, research-based intervention; or

(II) exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, state-approved grade-level standards, or intellectual development that is determined to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 CFR, §300.304 and §300.305; and

(iv) does not meet the findings under clauses (ii) and (iii) of this subparagraph primarily as the result of:

(I) a visual, hearing, or motor disability;

(II) an intellectual disability;

(III) emotional disturbance;

(IV) cultural factors;

(V) environmental or economic disadvantage; or

(VI) limited English proficiency.

(C) [~~(A)~~] Prior to and as part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.307-300.311, and in order to ensure that underachievement by [~~in~~] a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics, the following must be considered:

(i) (No change.)

(ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction, which must be provided to the student's parents. Data-based documentation of repeated assessments may include, but is not limited to, response to intervention progress monitoring results, in-class tests on grade-level curriculum, or other regularly administered assessments. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.

(D) The school district must ensure that the student is observed in the student's learning environment, including the regular classroom setting, to document the student's academic performance and behavior in the areas of difficulty. In determining whether a student has a specific learning disability, the admission, review, and dismissal (ARD) committee must decide to either use information from an observation in routine classroom instruction and monitoring of the student's performance that was conducted before the student was referred for an evaluation or have at least one of the members described in subsection (b) of this section conduct an observation of the student's academic performance in the regular classroom after the student has been referred for an evaluation and the school district has obtained parental consent consistent with 34 CFR, §300.300(a). In the case of a student of less

than school age or out of school, a member described in subsection (b) of this section must observe the student in an environment appropriate for a student of that age.

(E) The determination of whether a student suspected of having a specific learning disability is a student with a disability as defined in 34 CFR, §300.8, must be made by the student's parents and a team of qualified professionals, which must include at least one person qualified to conduct individual diagnostic examinations of children such as a licensed specialist in school psychology, an educational diagnostician, a speech-language pathologist, or a remedial reading teacher and one of the following:

(i) the student's regular teacher;

(ii) if the student does not have a regular teacher, a regular classroom teacher qualified to teach a student of his or her age; or

(iii) for a student of less than school age, an individual qualified by the Texas Education Agency to teach a student of his or her age.

~~[(B) A student with a learning disability is one who:]~~

~~*[(i)* has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability as stated in 34 CFR, §300.8(c)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311; and]~~

~~*[(ii)* does not achieve adequately for the student's age or meet state-approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving when provided appropriate instruction, as indicated by performance on multiple measures such as in-class tests; grade average over time (e.g. six weeks, semester); norm- or criterion-referenced tests; statewide assessments; or a process based on the student's response to evidence-based intervention; and]~~

~~*[(I)* does not make sufficient progress when provided a process based on the student's response to evidence-based intervention (as defined in 20 USC, §7801(21)), as indicated by the student's performance relative to the performance of the student's peers on repeated, curriculum-based assessments of achievement at reasonable intervals, reflecting student progress during classroom instruction; or]~~

~~*[(II)* exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, grade-level standards, or intellectual ability, as indicated by significant variance among specific areas of cognitive function, such as working memory and verbal comprehension, or between specific areas of cognitive function and academic achievement.]~~

(10) - (13) (No change.)

§89.1050. The Admission, Review, and Dismissal Committee.

(a) (No change.)

(b) For a student from birth through two years of age with a visual impairment or who is deaf or hard of hearing [~~and/or auditory impairments~~], an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the Texas Health and Human Services Commission. For students three years of age and older, school districts must develop an IEP.

(c) ARD committee membership.

(1) - (2) (No change.)

(3) If the student is:

(A) (No change.)

(B) a student with a suspected or documented auditory impairment, the ARD committee must include a teacher who is certified in the education of students who are deaf or hard of hearing [~~with auditory impairments~~]; or

(C) a student with suspected or documented deaf-blindness, the ARD committee must include a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students who are deaf or hard of hearing [~~with auditory impairments~~].

(4) (No change.)

(d) - (i) (No change.)

(j) A school district must comply with the following for a student who is new to [~~newly enrolled in~~] the school district.

(1) - (3) (No change.)

(4) A student with a disability who has an IEP in place from a previous in- or out-of-state school district and who enrolls in a new school district during the summer is not considered a transfer student for the purposes of this subsection or for 34 CFR, §300.323(e) or (f). For these students, the new school district must implement the IEP from the previous school district in full on the first day of class of the new school year or must convene an ARD committee meeting during the summer to revise the student's IEP for implementation on the first day of class of the new school year.

(k) (No change.)

§89.1070. Graduation Requirements.

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

(g) All students graduating under this section must be provided with a summary of academic achievement and functional performance as described in 34 Code of Federal Regulations (CFR), §300.305(e)(3). This summary must consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. An evaluation as required by 34 CFR, §300.305(e)(1), must be included as part of the summary for a student graduating under subsections (b)(2); (b)(3)(A), (B), or (C); or (f)(4)(A), (B), or (C) of this section.

(h) Students who participate in graduation ceremonies but who are not graduating under subsections (b)(2); (b)(3)(A), (B), or (C); or (f)(4)(A), (B), or (C) of this section and who will remain in school to complete their education do not have to be evaluated in accordance with subsection (g) [~~(h)~~] of this section.

(i) - (k) (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 May 24, 2021.

TRD-202102083
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: July 4, 2021
For further information, please call: (512) 475-1497

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DIVISION 4. SPECIAL EDUCATION FUNDING

19 TAC §89.1121

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §28.025, which establishes requirements related to high school graduation and academic achievement records; TEC, §29.001, which establishes general statutory authority for the state to develop, implement, and monitor a statewide plan for special education; TEC, §29.003, which establishes state-specific criteria related to eligibility requirements for special education; TEC, §48.102, which establishes formulas for funding special education programs; Texas Government Code, §392.002, as amended by Senate Bill 281, 86th Texas Legislature, 2019, which establishes requirements related to the use of person first respectful language; 34 Code of Federal Regulations (CFR), §300.8, which establishes definitions of eligibilities under special education; 34 CFR, §300.100, which establishes general authority for the statewide plan for special education; 34 CFR, §300.307, which establishes requirements related to criteria that states must adopt for determining eligibility for specific learning disabilities; 34 CFR, §300.308, which establishes requirements related to who determines whether a student has a specific learning disability; 34 CFR, §300.309, which establishes requirements related to eligibility criteria for specific learning disabilities; 34 CFR, §300.310, which establishes requirements related to the use of observations in the evaluation process for determining eligibility for specific learning disabilities; 34 CFR, §300.311, which establishes requirements related to the documentation of the determination of eligibility for specific learning disabilities; and 34 CFR, §300.323, which establishes requirements related to the implementation of students' individualized education programs and requirements related to transfer students.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§28.025, 29.001, 29.003, and 48.102; Texas Government Code, §392.002, as amended by Senate Bill 281, 86th Texas Legislature, 2019; and 34 Code of Federal Regulations, §§300.8, 300.100, 300.307-300.311, and 300.323.

§89.1121. Distribution of State Funds.

(a) - (b) (No change.)

(c) The special education attendance must be converted to contact hours by instructional arrangement and then to full-time equivalents. The full-time equivalent for each instructional arrangement is multiplied by the annual amount equal to the [~~school district's adjusted~~] basic allotment or, if applicable, the sum of the basic allotment and the allotment under Texas Education Code (TEC), §48.101, [~~(ABA) or adjusted allotment (AA)~~] and then multiplied by the weight for the instructional arrangement as prescribed in TEC, §48.102(a) [~~the Texas Education Code (TEC),~~ §42.151(a)]. Contact hours for any one student receiving special education services may not exceed six hours per day or 30 hours per week for funding purposes. The total contact hours generated per week is divided by 30 to determine the full-time equivalents. Special education full-time equivalents generated are deducted from the school district's ADA for purposes of the regular education allotment.

(d) - (f) (No change.)

(g) Students from birth through age two with a visual [~~or auditory~~] impairment , who are deaf or hard of hearing, or both who are provided services by the district according to an individual family services plan (IFSP) must be enrolled on the district home or regional day school campus and must be considered eligible for ADA on the same basis as other students receiving special education services.

(h) Funding for the mainstream special education instructional arrangement must be based on the average daily attendance of the students in the arrangement multiplied by the annual amount equal to the basic allotment or, if applicable, the sum of the basic allotment and the allotment under TEC, §48.101, and the 1.15 weight as provided by TEC, §48.102(a) [~~ABA or AA and the 1.1 weight~~]. The attendance must not be converted to contact hours/full-time equivalents as with the other instructional arrangements.

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 May 24, 2021.

TRD-202102084
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: July 4, 2021
For further information, please call: (512) 475-1497

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DIVISION 5. SPECIAL EDUCATION AND RELATED SERVICE PERSONNEL

19 TAC §89.1131

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §28.025, which establishes requirements related to high school graduation and academic achievement records; TEC, §29.001, which establishes general statutory authority for the state to develop, implement, and monitor a statewide plan for special education; TEC, §29.003, which establishes state-specific criteria related to eligibility requirements for special education; TEC, §48.102, which establishes formulas for funding special education programs; Texas Government Code, §392.002, as amended by Senate Bill 281, 86th Texas Legislature, 2019, which establishes requirements related to the use of person first respectful language; 34 Code of Federal Regulations (CFR), §300.8, which establishes definitions of eligibilities under special education; 34 CFR, §300.100, which establishes general authority for the statewide plan for special education; 34 CFR, §300.307, which establishes requirements related to criteria that states must adopt for determining eligibility for specific learning disabilities; 34 CFR, §300.308, which establishes requirements related to who determines whether a student has a specific learning disability; 34 CFR, §300.309, which establishes requirements related to eligibility criteria for specific learning disabilities; 34 CFR, §300.310, which establishes requirements related to the use of observations in the evaluation process for determining eligibility for specific learning disabilities; 34 CFR, §300.311, which establishes requirements related to the documentation of the determination of eligibility for specific learning disabilities; and 34 CFR, §300.323, which establishes requirements related to the implementation of students' individualized education programs and requirements related to transfer students.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§28.025, 29.001, 29.003, and 48.102; Texas Government Code, §392.002, as amended by Senate Bill 281, 86th Texas Legislature, 2019; and 34 Code of

Federal Regulations, §§300.8, 300.100, 300.307-300.311, and 300.323.

§89.1131. Qualifications of Special Education, Related Service, and Paraprofessional Personnel.

(a) (No change.)

(b) A teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving eligible students 3-21 years of age, as defined in §89.1035(a) of this title (relating to Age Ranges for Student Eligibility), in accordance with the limitation of their certification, except for the following.

(1) - (3) (No change.)

(4) Teachers certified in the education of students who are deaf or hard of hearing [~~with auditory impairments~~] must be available to students who are deaf or hard of hearing [~~with auditory impairments~~] , including deaf-blindness, through one of the school district's instructional options, a regional day school program for the deaf, or a shared services arrangement with other school districts.

(5) - (7) (No change.)

(c) - (e) (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 May 24, 2021.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 417. AGENCY AND FACILITY RESPONSIBILITIES

SUBCHAPTER A. STANDARD OPERATING PROCEDURES

25 TAC §417.47

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §417.47, concerning Training Requirements for State Mental Health Facilities.

BACKGROUND AND PURPOSE

The purpose of the proposal 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, which was most recently extended on April 5, 2021. In the 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. Due to the imminent peril to the public health, safety, and welfare of the state, HHSC accordingly adopted an emergency amendment to rules regarding staff training requirements. This proposal creates a permanent rule to replace the emergency amendment when it expires.

HHSC is proposing the amendment to efficiently and effectively deploy staff to meet basic needs during this unprecedented time without posing risk to the individuals served. This amendment protects individuals served by the state hospitals and the public health, safety, and welfare of the state during a disaster, including the current COVID-19 pandemic.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §417.47 provides that training may be modified, to include the most essential content, and expedited, due to the COVID-19 pandemic declared disaster, and requires infection control training specific to COVID-19.

This amendment is identical to the existing emergency rule amendment to §417.17, Training Requirements for State Mental Health Facilities, created in response to the COVID-19 pandemic.

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.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

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

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

(6) the proposed rule will not expand, limit, or repeal 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 because the proposed rule applies only to HHSC.

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 the rule is necessary to protect the health, safety, and

welfare of the residents of Texas and is adopted in response to a natural disaster.

PUBLIC BENEFIT AND COSTS

Lauren Lacefield Lewis, Facility Support Services Director, has determined that for each year of the first five years the rule is in effect, the public benefit will be that individuals served by the state hospitals will continue to receive quality care. The faster deployment of new staff, through this rule, helps meet the increased demands during a disaster, minimize overtime, ease staff burnout, and address other staffing challenges caused by the public health emergency.

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 proposed rule applies only to HHSC.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HealthandSpecialtyCare@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R001" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §552.052, which sets forth requirements for certain competency courses for state hospital employees and requires the Executive Commissioner of HHSC to adopt rules regarding refresher trainings.

The amendment affects Texas Government Code §531.0055 and Texas Health and Safety Code §552.052.

§417.47. Training Requirements for State Mental Health Facilities.

(a) All State Hospital Employees. As required by Texas Health and Safety Code, §552.052(b), before performing the employee's duties without direct supervision, all state mental health facility (SMHF) staff members shall receive competency training and instruction on general duties. Training shall include the prevention, screening, isolation, and use of personal protective equipment related to COVID-19. Due to the COVID-19 pandemic declared disaster, the competency training, instruction, and evaluation may be modified and expedited to ensure the employee has achieved competency essential to perform the employee's duties.

(b) Direct Care Employees. Before an employee who provides direct delivery of services to a patient begins to perform direct care duties without direct supervision, a SMHF staff member shall receive training and instruction, in addition to the training outlined in subsection (a) of this section, on implementation of the interdisciplinary treatment program for each patient, a person admitted to a state hospital under the management and control of the department, for whom they will provide care.

(c) Specialized Training. Direct care employees shall receive additional training and instructional information in accordance with the specialized needs of the population being served, including services on units for individuals with intellectual disabilities, medical impairments, or geriatric patients within a reasonable period of time after the staff member begins employment.

(d) All SMHF staff members shall receive annual refresher training on the topics outlined in subsection (a) of this section throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training or due to the COVID-19 pandemic declared disaster.

(e) Direct Care Employees whose duties require delivery of services to a patient shall receive annual refresher training on the topics outlined in subsections (a) and (b) of this section throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training or due to the COVID-19 pandemic declared disaster.

(f) Direct Care Employees whose duties require delivery of services on units for individuals with intellectual disabilities, medical impairments, or geriatric patients shall receive annual refresher training on the topics outlined in subsections (a), (b), and (c) of this section, throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training or due to the COVID-19 pandemic declared disaster.

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 May 18, 2021.

TRD-202101986
Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: July 4, 2021
For further information, please call: (512) 438-3049

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PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.26

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes an amendment to 25 Texas Administrative Code §703.26 clarifying that CPRIT may reimburse certain expenses incurred by participants in a cancer clinical trial pursuant to the authority provided by Texas Health and Safety Code Annotated, §102.203(b).

Background and Justification

The 86th Legislature adopted H.B. 3147, creating Texas Health and Safety Code Annotated, Chapter 50 "Cancer Clinical Trial Participation Program." The legislature also amended CPRIT's statute to authorize reimbursement for costs of participation incurred by cancer clinical trial participants, including transportation, lodging, and costs reimbursed under a program established pursuant to Chapter 50. The proposed amendment to §703.26 makes the administrative rule consistent with the statutory changes regarding reimbursement for expenses associated with participating in a cancer clinical trial.

Fiscal Note

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

Public Benefit and Costs

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

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

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

Government Growth Impact Statement

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

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

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

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

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

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

(6) the proposed rule change will not expand existing rule;

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

(8) The rule change is unlikely to have an impact on the state's economy. Although the change is likely to have neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

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

Statutory Authority

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

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

§703.26. Allowable Costs.

(a) A cost is an Allowable Cost and may be charged to the Grant Award if it is reasonable, allocable, and adequately documented.

(1) A cost is reasonable if the cost does not exceed that which would be incurred by a prudent individual or organization under the circumstances prevailing at the time the decision was made to incur the cost; and is necessary for the performance of the Grant Award defined in the Scope of Work in the Grant Contract.

(2) A cost is allocable if the cost:

(A) Benefits the Grant Award either directly or indirectly, subject to Indirect Cost limits stated in the Grant Contract;

(B) Is assigned the Grant Award in accordance with the relative benefit received;

(C) Is allowed or not prohibited by state laws, administrative rules, contractual terms, or applicable regulations;

(D) Is not included as a cost or used to meet Matching Fund requirements for any other Grant Award in either the current or a prior period; and

(E) Conforms to any limitations or exclusions set forth in the applicable cost principles, administrative rules, state laws, and terms of the Grant Contract.

(3) A cost is adequately documented if the cost is supported by the organization's accounting records and documented consistent with §703.24 of this title (relating to Financial Status Reports).

(b) Grant Award funds must be used for Allowable Costs as provided by the terms of the Grant Contract, Chapter 102, Texas Health and Safety Code, the Institute's administrative rules, and the Uniform Grant Management Standards (UGMS) adopted by the Comptroller's Office. If guidance from the Uniform Grant Management Standards on a particular issue conflicts with a specific provision of the Grant Contract, Chapter 102, Texas Health and Safety Code or the Institute's administrative rules, then the Grant Contract, statute, or Institute administrative rule shall prevail.

(c) An otherwise Allowable Cost will not be eligible for reimbursement if the Grant Recipient incurred the expense outside of the Grant Contract term, unless the Grant Recipient has received written approval from the Institute's Chief Executive Officer to receive reimbursement for expenses incurred prior to the effective date of the Grant Contract.

(d) An otherwise Allowable Cost will not be eligible for reimbursement if the benefit from the cost of goods or services charged to the Grant Award is not realized within the applicable term of the Grant Award. The Grant Award should not be charged for the cost of goods or services that benefit another Grant Award or benefit a period prior to the Grant Contract effective date or after the termination of the Grant Contract.

(e) Grant Award funds shall not be used to reimburse unallowable expenses, including, but not limited to:

(1) Bad debt, such as losses arising from uncollectible accounts and other claims and related costs.

(2) Contributions to a contingency reserve or any similar provision for unforeseen events.

(3) Contributions and donations made to any individual or organization.

(4) Costs of entertainment, amusements, social activities, and incidental costs relating thereto, including tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation and gratuities.

(5) Costs relating to food and beverage items, unless the food item is related to the issue studied by the project that is the subject of the Grant Award.

(6) Fines, penalties, or other costs resulting from violations of or failure to comply with federal, state, local or Indian tribal laws and regulations.

(7) An honorary gift or a gratuitous payment.

(8) Interest and other financial costs related to borrowing and the cost of financing.

(9) Legislative expenses such as salaries and other expenses associated with lobbying the state or federal legislature or similar local governmental bodies, whether incurred for purposes of legislation or executive direction.

(10) Liability insurance coverage.

(11) Benefit replacement pay or legislatively-mandated pay increases for eligible general revenue-funded state employees at Grant Recipient state agencies or universities.

(12) Professional association fees or dues for an individual employed by the Grant Recipient. Professional association fees or dues for the Grant Recipient's membership in business, technical, and professional organizations may be allowed, with prior approval from the Institute, if:

(A) the professional association is not involved in lobbying efforts; and

(B) the Grant Recipient demonstrates how membership in the professional association benefits the Grant Award project(s).

(13) Promotional items and costs relating to items such as T-shirts, coffee mugs, buttons, pencils, and candy that advertise or promote the project or Grant Recipient.

(14) Fees for visa services.

(15) Payments to a subcontractor if the subcontractor working on a Grant Award project employs an individual who is a Relative of the Principal Investigator, Program Director, Company Representative, Authorized Signing Official, or any person designated as Key Personnel for the same Grant Award project (collectively referred to as "affected Relative"), and:

(A) the Grant Recipient will be paying the subcontractor with Grant Award funds for any portion of the affected Relative's salary; or

(B) the Relative submits payment requests on behalf of the subcontractor to the Grant Recipient for payment with Grant Award funds.

(C) For exceptional circumstances, the Institute's Chief Executive Office may grant an exception to allow payment of Grant Award funds if the Grant Recipient notifies the Institute prior to finalizing the subcontract. The Chief Executive Officer must notify the Oversight Committee in writing of the decision to allow reimbursement for the otherwise unallowable expense.

(D) Nothing herein is intended to supersede a Grant Recipient's internal policies, to the extent that such policies are stricter.

(16) Fundraising.

(17) Tips or gratuities.

(f) Pursuant to Texas Health and Safety Code Section 102.203(b) the Institute may authorize reimbursement for one or more of the following expenses incurred by a cancer clinical trial participant that are associated with participating in a clinical trial and included in the Grant Recipient's Approved Budget:

(1) transportation, including car mileage, bus fare, taxi or ride hailing fare exclusive of tips, and commercial economy class airfare within the borders of the State of Texas;

(2) lodging, and

(3) any cost reimbursed under a cancer clinical trial participation program established pursuant to Texas Health and Safety Code Chapter 50 (relating to Cancer Clinical Trial Participation Program).

(g) [~~(f)~~] The Institute is responsible for making the final determination regarding whether an expense shall be considered an Allowable Cost.

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

Filed with the Office of the Secretary of State on May 21, 2021.

TRD-202102050
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Earliest possible date of adoption: July 4, 2021
For further information, please call: (512) 305-8487

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE SUBCHAPTER J. HAZARDOUS WASTE GENERATION, FACILITY AND DISPOSAL FEE SYSTEM

30 TAC §335.323, §335.325

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §335.323 and §335.325.

Background and Summary of the Factual Basis for the Proposed Rules

Texas Health and Safety Code (THSC), §361.134 and §361.136 allows the commission to collect fees for industrial solid waste and hazardous waste generation and management. Industrial solid waste covers what is commonly referred to as Class 1 nonhazardous waste or nonhazardous waste. Additionally, THSC, §361.133(d) sets a collection cap up to $16 million in waste management fees annually and THSC, §361.134(c) provides collection caps of $10,000 and $50,000 for nonhazardous and hazardous generators, respectively. Fee schedules for waste generators and waste management have not changed since 1994. The commission proposes an increase in both the generator and management fees and the ability to adjust fees annually under a specified maximum fee schedule. The increase in fees and the ability to adjust fees would allow the commission to optimize existing statutory caps to manage the Waste Management Account more adequately. The commission would utilize various communication strategies to inform the public and regulated entities of fee changes.

Section by Section Discussion

In addition to the proposed revisions associated with this rulemaking, various non-substantive changes are proposed to update references or correct grammar to be consistent throughout Chapter 335. These changes are non-substantive and are not specifically discussed in the Section by Section Discussion portion of this preamble.

Subchapter J: Hazardous Waste Generation, Facility and Disposal Fee System

§335.323, Generation Fee Assessment

The commission proposes to amend the figures located in §335.323(e)(1) and (2) to provide for increases to the generator fee for both hazardous and Class 1 nonhazardous waste generators. The commission proposes §335.323(e)(3) to allow the executive director to adjust the fees on an annual basis at or below the established maximum annual fee schedules in the revised figures located in §335.323(e)(1) and (2).

§335.325, Industrial Solid Waste and Hazardous Waste Management Fee Assessment

The commission proposes to amend the figures located in §335.325(j)(1) and (2) to provide for increases to the waste management fee for both hazardous and Class 1 nonhazardous waste management facilities. The commission proposes §335.325(j)(3) to allow the executive director to adjust the fees on an annual basis at or below the established maximum fee schedules in the revised figures located in §335.323(j)(1) and (2).

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules would be in effect, fiscal implications would be anticipated for the agency and for other units of state or local government as a result of administration or enforcement of the proposed rulemaking. This rulemaking addresses a proposed fee increase for the generation and management fees and the ability to adjust fees annually within the fee schedule.

The proposed rulemaking would increase the management fee schedule by 45%. The executive director would have the option of raising fees to the maximum or phasing in the increase. The agency estimates that the maximum revenue increase for the management fee would be $4,848,962 per year for the next five years. In accordance with state law, half of the funds would be deposited into General Revenue Account 0549 Waste Management, a dedicated account which has experienced a declining fund balance. The other half of the revenue would be deposited into General Revenue Account 0550 Hazardous and Solid Waste Remediation Fees.

The proposed rulemaking would increase the generation fee from $0.50 to a maximum of $2.00 per ton for Class 1 nonhazardous waste generators and from $2.00 to a maximum of $6.00 per ton for hazardous waste generators. The agency estimates that the maximum revenue increase for the generation fee would be $3,889,305 per year for the next five years. The revenue would be deposited into General Revenue Account 0549 Waste Management.

The proposed fee increase may impact units of local government. Twenty-five percent of the fees collected for the management of hazardous and Class 1 nonhazardous waste at commercial facilities is sent to the county in which the facility is located. At the maximum rate, the agency estimates that the proposed rules would generate an additional $835,564 for these counties per year.

Based on agency data for fiscal year 2020, six governmental entities and 81 waste generators owned or operated by a unit of government are expected to be affected. Additional facilities may be impacted if they begin to manage or generate waste. The estimated average increase of the proposed management fees on these facilities would be $1,616 per facility per year. The estimated average increase of the proposed generation fees on these facilities with Class 1 nonhazardous waste would be $1,586 per facility per year, and the estimated average increase for hazardous waste would be $3,529 per facility per year. The methodology used to determine the revenue estimates included averaging agency data from fiscal years 2019 and 2020.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years that the proposed rules would be in effect, the public benefit anticipated would be increased stability in the General Revenue Account 0549 Waste Management, which has had a decreasing fund balance in recent years. The funds from this dedicated account are used to regulate industrial solid and hazardous waste, as stated in the THSC, §361.132. The regulation of this waste is required by law to protect human health and the environment.

The proposed rulemaking is anticipated to result in fiscal implications for certain businesses or individuals, specifically all permitted and active industrial hazardous waste facilities. The agency estimates there are 176 waste management facilities and 2,404 industrial or hazardous solid waste generators.

The proposed rulemaking would increase the management fee schedule by 45%. The executive director would have the option of raising fees to the maximum or phasing in the increase. The estimated management fee increase will be $53,058 per facility per year. The proposed rulemaking would increase the generation fee from $0.50 to a maximum of $2.00 per ton for Class 1

nonhazardous waste generators, and from $2.00 to a maximum of $6.00 per ton for hazardous waste generators. The estimated average increase of the proposed management fees on these facilities would be $1,616 per facility per year. The estimated average increase of the proposed generation fees on these facilities with Class 1 nonhazardous waste would be $1,586 per facility per year, and the estimated average increase for hazardous waste would be $3,529 per facility per year. The methodology used to determine the estimates included averaging agency data from fiscal years 2019 and 2020.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking would not adversely affect a local economy in a material way for the first five years that the proposed rules would be in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking would not adversely affect rural communities in a material way for the first five years that the proposed rules would be in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules would be in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking would not adversely affect a small or micro-business in a material way for the first five years the proposed rules would be in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would not require the creation of new employee positions nor eliminate current employee positions. The proposed rulemaking would increase fees paid to the agency. The proposed rulemaking would not create, expand, repeal or limit an existing regulation, nor would the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rulemaking should not have a positive or negative impact on the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225. The commission determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rulemaking is not to protect the environment or to reduce risks to human health from environmental exposure. The intent of the rulemaking is to provide additional revenue for the agency's waste fund, so the proposed rulemaking is not a major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a "Major environmental rule", the proposed rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225.

First, the rulemaking would not exceed a standard set by federal law because the commission is proposing this rulemaking within the authority given by the federal hazardous waste program.

Second, the rulemaking would not propose requirements that are more stringent than existing state laws. The THSC authorizes the commission to collect an annual generation fee from each generator who generates Class I industrial solid waste or hazardous waste and to collect a fee on industrial solid waste and hazardous waste managed at a facility, and the proposed rulemaking seeks to adjust fees consistent with state law.

Third, the proposed rulemaking would not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission is proposing rules necessary to maintain the budget for the authorized state hazardous waste program.

Fourth, this rulemaking would not seek to adopt a rule solely under the general powers of the agency. Rather, sections of the THSC would authorize this rulemaking, which are cited in the Statutory Authority section of this preamble.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rules and performed analysis of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to provide the commission with the additional revenue necessary to operate agency waste program activities funded by the Waste Management Account in a manner that is consistent with the statutory requirements set forth in the THSC. The proposed rules would substantially advance this stated purpose by increasing the fees for industrial solid waste and hazardous waste generation and management and enabling

the commission to adjust fees annually in accordance with existing statutory caps.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations would not affect a landowner's rights in private real property because this rulemaking would not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the proposed rules would not burden private real property because they amend a fee rule which relates to funding for the commission's waste program activities.

Consistency with the Coastal Management Program

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are consistent with CMP goals and policies. The amendments are consistent with CMP goals and policies because the rulemaking is a fee rule, which is a procedural mechanism for paying for commission programs; would not have direct or significant adverse effect on any coastal natural resource areas; would not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments would not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Virtual Hearing

The commission will hold a *virtual* public hearing on this proposal on June 29, 2021, at 10:00 a.m.. The virtual hearing is structured for the receipt of oral comments by interested persons. Individuals who register may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to the virtual hearing.

Persons who do not have internet access or who have special communication or other accommodation needs who are planning to participate in the virtual hearing should contact 1-800-RELAY-TX (TDD) to register. Accommodation requests should be made as far in advance as possible.

Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments or want their attendance on record must register by Friday, June 25, 2021. To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on June 28, 2021 to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZGJmNjljZDQtYTM2ZC00NDVkLWE0MGMtNTA1ODNkODA3Y-Tkx%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%220ab3b264-6a49-48c6-afc8-8225e4a7b0ac%22%2c%22IsBroadcastMeeting%22%3atrue%7d&btype=a&role=a

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2020-010-335-WS. The comment period closes on July 6, 2021. Please choose only one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/prop.html.* For further information, please contact Garrett Heathman, Waste Permits Division, (512) 239-0520.

Statutory Authority

The rules are proposed under the authority of Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.024, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under THSC, Chapter 361; and THSC, §361.017, which establishes the commission's jurisdiction over all aspects of the management of industrial solid waste and municipal hazardous waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction.

The proposed rules implement THSC, §§361.133(d), 361.134, 361.134(c), and 361.136.

§335.323. Generation Fee Assessment.

(a) An annual generation fee is hereby assessed each industrial or hazardous solid waste generator that is required to notify under §335.6 of this title (relating to Notification Requirements) and which generates Class 1 industrial solid waste or hazardous waste or whose act first causes such waste to become subject to regulation under Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions) on or after September 1, 1985. These fees shall be deposited in the hazardous and solid waste fee fund. The amount of a generation fee is determined by the total amount of Class 1 nonhazardous waste or hazardous waste generated during the previous calendar year. The annual generation fee may not be less than $50. The annual generation fee for hazardous waste shall not be more than $50,000 and for nonhazardous waste not more than $10,000.

(b) Wastewaters are exempt from assessment under the following conditions.

(1) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations (CFR) Part 261, Subpart C, concerning characteristics of hazardous waste, and are rendered nonhazardous [~~non-hazardous~~] by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to

Purpose, Scope and Applicability) are exempt from the assessment of hazardous waste generation fees.

(2) Wastewaters classified as Class 1 industrial solid wastes because they meet the criteria for a Class 1 waste under the provisions of §335.505 of this title (relating to Class 1 Waste Determination) and are treated on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title or §335.41 of this title and no longer meet the criteria for a Class 1 waste are exempt from the assessment of waste generation fees.

(3) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 CFR Part 261, Subpart C, concerning characteristics of hazardous waste, and are transported via direct hard pipe connection to a publicly-owned treatment works (POTW) and rendered nonhazardous by neutralization or other treatment are exempt from the assessment of hazardous waste generation fees.

(4) Wastewaters classified as Class 1 industrial solid wastes because they meet the criteria for a Class 1 waste under the provisions of §335.505 of this title and are transported via direct hard pipe connection to a POTW for treatment and no longer meet the criteria for a Class 1 waste are exempt from the assessment of waste generation fees.

(5) Wastewaters which are designated as hazardous waste solely under 40 CFR §261.3(a)(2)(iv) that are generated at terminal operations due to de minimis losses of commercial chemical products and chemical intermediates listed in 40 CFR §261.33 and are treated on-site or off-site at a POTW are exempt from the assessment of hazardous waste generation fees, provided that any discharge to a POTW is via a direct hardpipe connection. For the purposes of this section, de minimis losses shall have the meaning described in 40 CFR §261.3(a)(2)(iv)(D).

(6) These exemptions or adjustments in fee assessment in no way limit a generator's obligation to report such waste generation or waste management activity under any applicable provision of this chapter.

(7) A wastewater stream treated to meet a different waste classification is subject to only one assessment under this section.

(c) Wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from any generation fee assessed under this section.

(d) Wastes which are recycled shall be exempt from any generation fee assessed under this section.

(e) Generation fees are to be assessed up to the maximum annual fee according to the schedules in the Tables located in this subsection. ~~following schedule:~~]

(1) Hazardous [~~hazardous~~] waste schedule. [~~:~~]
Figure: 30 TAC §335.323(e)(1)
[~~Figure: 30 TAC §335.323(e)(1)~~]

(2) Nonhazardous [~~nonhazardous~~] waste schedule. [~~:~~]
Figure: 30 TAC §335.323(e)(2)
[~~Figure: 30 TAC §335.323(e)(2)~~]

(3) The executive director may adjust fees at or up to the annual fee specified in the fee schedules in this subsection, on an annual basis.

(f) Any claim of exemption from or adjustment to the assessment of a generation fee under this section must be made in writing to the executive director prior to the due date of the assessment.

§335.325. Industrial Solid Waste Generation, Facility and Disposal Fee System.

(a) A fee is hereby assessed on each owner or operator of a waste storage, processing, or disposal facility, except as provided in subsections (b) - (e) of this section. A fee is assessed for hazardous wastes which are stored, processed, disposed, or otherwise managed and for Class 1 industrial wastes which are disposed at a commercial facility. For the purpose of this section, the storage, processing, or disposal of hazardous waste for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope and Applicability) is not subject to a hazardous waste management fee.

(b) A fee imposed on the owner or operator of a commercial hazardous waste storage, processing, or disposal facility for hazardous wastes which are generated in this state and received from an affiliate or wholly owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a noncommercial facility. For the purpose of this section, an affiliate of a commercial hazardous waste facility must have a controlling interest in common with that facility.

(c) The storage, processing, or disposal of industrial solid waste or hazardous wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from the assessment of a waste management fee under this section.

(d) A fee shall not be imposed on the owner or operator of a waste storage, processing, or disposal facility for the storage of hazardous wastes if such wastes are stored within the time periods allowed by and in accordance with the provisions of §335.69 of this title (relating to Accumulation Time).

(e) A fee may not be imposed under this section on the operation of a facility permitted under the Texas Water Code, Chapter 26, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed, or disposed of in a wastewater treatment system that discharges into surface waters of the state. For the purpose of this section, the management of a hazardous waste in a surface impoundment which is not exempt from assessment under this subsection will be assessed the fee for processing under subsection (j) of this section.

(f) The waste management fee authorized under this section shall be based on the total weight or volume of a waste except for wastes which are disposed of in an underground injection well, in which case the fee shall be based on the dry weight of the waste, measured in dry weight tons (dwt), as defined in §335.322 of this title (relating to Definitions) and §335.326 of this title (relating to Dry Weight Determination).

(g) The hazardous waste management fee for wastes generated in this state shall not exceed $40 per ton for wastes which are landfilled.

(h) The operator of a waste storage, processing, or disposal facility receiving industrial solid waste or hazardous waste from out-of-state generators shall be assessed the fee amount required on wastes generated in state plus an additional increment to be established by rule, except as provided in subsection (k) of this section.

(i) For the purposes of subsection (j) of this section, energy recovery means the burning or incineration of a hazardous waste fuel and fuel processing means the handling of a waste fuel, including storage and blending, prior to its disposal by burning.

(j) Except as provided in subsections (k) - (q) of this section, waste management fees shall be assessed up to the maximum fee according to the schedules in the Tables located in this subsection. [~~following schedule.~~]

(1) Hazardous waste schedule.
Figure: 30 TAC §335.325(j)(1)
[~~Figure:~~ ~~30 TAC §335.325(j)(1)~~]

(2) Class 1 nonhazardous [~~non-hazardous~~] waste schedule.
Figure: 30 TAC §335.325(j)(2)
[~~Figure:~~ ~~30 TAC §335.325(j)(2)~~]

(3) The executive director may adjust fees at or up to the fee specified in the fee schedule, on an annual basis.

(k) For wastes which are generated out-of-state, the fee will be that specified in subsection (j) of this section, except that the fee for the storage, processing, incineration, and disposal of hazardous waste fuels shall be the same for wastes generated out-of-state and in-state.

(l) Except as provided in subsection (m) of this section, only one waste management fee shall be paid for a waste managed at a facility. In any instance where more than one fee could be applied under this section to a specific volume of waste, the higher of the applicable fees will be assessed.

(m) A fee for storage of hazardous waste shall be assessed in addition to any fee for other waste management methods at a facility. No fee shall be assessed under this section for the storage of a hazardous waste for a period of less than 90 days as determined from the date of receipt or generation of the waste (or the effective date of this section). The fee rate specified in the schedule under subsection (j) of this section shall apply to the quantity of waste in any month which has been in storage for more than 90 days or the number for which an extension has been granted under §335.69 of this title.

(n) A facility which receives waste transferred from another facility shall pay any waste management fee applicable under this section and shall not receive credit for any fee applied to the management of the waste at the facility of origin.

(o) The fee rate for incineration of aqueous wastes containing 5.0% or less of total organic carbon will be 10% of the fee for incineration under the schedule in subsection (j) of this section.

(p) A commercial waste disposal facility receiving solid waste not subject to assessment under this section shall pay any assessment due under Chapter 330, Subchapter P of this title (relating to Fees and Reporting [~~Reports~~]). No fee for disposal of a solid waste under Chapter 330, Subchapter P of this title, shall be assessed in addition to a fee for disposal under this section.

(q) An operator of a hazardous waste injection well electing to separately measure inorganic salts in the determination of dry weight under the provisions of §335.326(c) of this title shall pay a fee equivalent to 20% of the fee for underground injection assessed in subsection (j) of this section for the components of the waste stream determined to be inorganic salts.

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 May 21, 2021.

TRD-202102044
Robert Martinez
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 4, 2021
For further information, please call: (512) 239-2678

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 275. SUPERVISION OF INMATES

37 TAC §275.3

The Commission on Jail Standards (TCJS) proposes a new §275.3, concerning temporary jailers. The proposed new rule adds §275.3 to 37 TAC. HB 4468, 87th legislative session, amended Occupations Code §1701.310(f) to prohibit a county jailer appointed on a temporary basis from being promoted to a supervisory position in a county jail. Current jail standards §275.2 requires jailer supervisors to be licensed but does not state clearly that temporary jailers may not supervise. The proposed rule will clarify explicitly that temporary jailers may not supervise other jailers and will make reference to Occupations Code §1701.310(f) as the statutory source of the rule.

Brandon S. Wood, Executive Director, has determined that for the first five-year period of this rule there is no foreseeable implication to the costs or revenues of state or local governments as a result of enforcing or administering the rule.

Mr. Wood has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules by ensuring that all jailer supervisors have the proper training and experience necessary to work within the Texas county jail system. Mr. Wood has also determined that this rule during each of the first five years of its effect will neither create nor 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, and will not increase or decrease the number of individuals subject to the rule's applicability. However, the new rule will expand existing regulation, which currently states only that a county jailer with a temporary license shall not be appointed as Jail Administrator or to any other supervisory position and shall not be assigned supervisory duties. Mr. Wood does not anticipate any cost to individuals, small businesses/micro-businesses or rural communities as a result of these rules for each year of the first five years of their effect.

Comments on the proposed rule may be submitted by June 11, 2021, to William Turner, P.O. Box 12985, Austin, Texas 78711, Fax (512) 463-3185, or e-mail at will.turner@tcjs.state.tx.us.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The proposed rule implements Occupations Code §1701.310(f).

§275.3. Temp Jailers May Not Supervise.

In accordance with Occupations Code §1701.310(f), a county jailer with a temporary license shall not be appointed as Jail Administrator or to any other supervisory position and shall not be assigned supervisory duties.

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 May 19, 2021.

TRD-202102013
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: July 4, 2021
For further information, please call: (512) 463-2690

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 3. RESPONSIBILITIES OF STATE FACILITIES

SUBCHAPTER D. TRAINING

40 TAC §§3.401 - 3.403

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §3.401, concerning Training for New Employees; §3.402, concerning Additional Training for Direct Support Professionals; and §3.403, concerning Refresher Training.

BACKGROUND AND PURPOSE

The purpose of the proposal 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, which was most recently extended on April 5, 2021. In the 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. Due to the imminent peril to the public health, safety, and welfare of the state, HHSC accordingly adopted emergency amendments to rules regarding staff training requirements. This proposal creates permanent rules to replace the emergency amendments when they expire.

HHSC is proposing amendments to efficiently and effectively deploy staff to meet basic needs during this unprecedented time without posing risk to the individuals served. These amendments will protect individuals served by the state supported living centers and the public health, safety, and welfare of the state during the current COVID-19 pandemic.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §3.401 adds language that provides that competency training may be modified, to include the most essential content, and expedited due to the COVID-19 pandemic declared disaster. New language is added to provide that instruction and information should be provided about prevention, screening, isolation, and use of personal protective equipment related to COVID-19. A reference is also revised.

The proposed amendment to §3.402 ensures direct support professionals receive training on all statutorily required topics.

The proposed amendment to §3.403 reorganizes and simplifies the language for readability and adds a new subsection b providing that trainings required by subsection (a) must be provided at the earliest opportunity. A reference is also revised.

These amendments are based on the existing emergency rule amendments: §3.401, Training for New Employees; §3.402, Additional Training for Direct Support Professionals; and §3.403, Refresher Training, created in response to the COVID-19 pandemic.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

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

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

(6) the proposed rules will not expand, limit, or repeal existing rules;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rules apply to HHSC only.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Lauren Lacefield Lewis, Facility Support Services Director, has determined that for each year of the first five years the rules are in effect, the public benefit will be that individuals served by the state supported living centers will continue to receive quality care. The faster deployment of new staff, through these rules, helps meet the increased demands during a disaster, minimize overtime, ease staff burnout, and address other staffing challenges caused by the public health emergency.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules apply only to HHSC.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HealthandSpecialtyCare@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R001" in the subject line.

STATUTORY AUTHORITY

The amended rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §555.024, which sets for forth requirements for certain competency courses for SSLC employees and requires the Executive Commissioner of HHSC to adopt rules regarding refresher trainings.

The amendments affect Texas Government Code §531.0055 and Texas Health and Safety Code §555.024.

§3.401. Training for New Employees.

(a) Before an employee performs employment duties without direct supervision, the employee shall receive competency training and instruction on general duties. Due to the COVID-19 pandemic declared disaster, the competency training, instruction, and evaluation may be modified and expedited to ensure the employee has achieved competency essential to perform the employee's duties [~~a facility must provide the employee with basic orientation~~].

(b) The focus of the basic orientation must be on:

(1) the uniqueness of each individual with whom the employee will work;

(2) techniques for improving the quality of life and promoting the integration, independence, person-directed choices, and health and safety of individuals; and

(3) the conduct expected of employees.

(c) The basic orientation must include instruction and information on the following topics:

(1) the general operation and layout of the facility, including armed intruder lockdown procedures;

(2) an introduction to intellectual disabilities;

(3) an introduction to autism;

(4) an introduction to mental illness and dual diagnosis;

(5) the rights of individuals as specified in [~~40 Texas Administrative Code (TAC) Part 1,~~] Chapter 4, Subchapter C of this title (relating to Rights of Individuals with an Intellectual Disability), including the right to live in the least restrictive setting appropriate to the individual's needs and abilities;

(6) respecting personal choices made by individuals;

(7) the safe and proper use of restraints;

(8) abuse, neglect, and exploitation of individuals;

(9) unusual incidents;

(10) illegal drug use in the workplace;

(11) workplace violence;

(12) sexual harassment in the workplace;

(13) preventing and treating infection, including the prevention, screening, isolation, and use of personal protective equipment related to COVID-19;

(14) responding to emergencies, including information about first aid and cardiopulmonary resuscitation procedures;

(15) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(16) the rights of facility employees.

§3.402. Additional Training for Direct Support Professionals.

(a) Before a direct support professional performs employment duties without direct supervision, a facility must provide relevant training essential to perform the employee's duties. Direct support professionals will be provided basic instructional information on these statutorily required topics [~~that covers at least the following topics to the direct support professional~~]:

(1) implementation and data collection requirements for the individual support plan for each individual with whom the direct support professional will work;

(2) communication styles and strategies for each individual with whom the direct support professional will work;

(3) prevention and management of aggressive or violent behavior;

(4) observing and reporting changes in behavior, appearance, or health of individuals;

(5) positive behavior support;

(6) emergency response;

(7) development of individual support plans;

(8) self-determination;

(9) seizure safety;

(10) working with aging individuals;

(11) assisting individuals with personal hygiene;

(12) physical and nutritional management plans;

(13) home and community-based services, including the principles of community inclusion and participation in the community living options information process; and

(14) procedures for securing evidence following an incident of suspected abuse, neglect, or exploitation.

(b) If training on any of the following topics is relevant to working with a particular individual, a facility must provide that training to the direct support professional before performing duties related to that individual without direct supervision:

(1) using techniques for lifting, positioning, moving and increasing mobility;

(2) assisting individuals with visual, hearing, or communication impairments or who require adaptive devices and specialized equipment;

(3) recognizing appropriate food textures; and

(4) using proper feeding techniques to assist individuals with meals.

§3.403. Refresher Training.

(a) A facility must provide training on:

(1) abuse, neglect, and exploitation to an employee annually; [.]

(2) [~~(b) A facility must provide training on~~] unusual incidents to an employee annually; [.]

(3) [~~(c) A facility must provide training on~~] the rights of individuals as specified in [~~40 Texas Administrative Code (TAC) Part 1,~~] Chapter 4, Subchapter C of this title (relating to Rights of Individuals with an Intellectual Disability) to a direct care professional annually and to an employee who is not a direct care professional every two years; and [.]

(4) [~~(d) A facility must provide training on~~] restraints to a direct support professional annually.

(b) During the COVID-19 pandemic declared disaster, trainings required by subsection (a) of this section must be provided at the earliest opportunity.

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 May 18, 2021.

TRD-202101987
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 4, 2021
For further information, please call: (512) 438-3049

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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Department of Family and Protective Services (DFPS), proposes amendments to §§700.701, 700.703, 700.704, and 700.706; the repeal of §700.702 and §700.705; and new §§700.710, 700.712, 700.714, 700.716, 700.718, 700.720, and 700.722 in Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter G, relating to Services for Families.

These rules were previously proposed and published in the September 18, 2020 issue of the *Texas Register* (45 TexReg 6587). However, DFPS has made additional edits to the proposed language in §§700.712, 700.718, and 700.720 concerning provision of Family Based Safety Services, including when DFPS closes a case for services, DFPS is re-proposing the rules.

BACKGROUND AND PURPOSE

The purpose of the rule revisions is to separate the Family Based Safety Services and Family Reunification Services rules by creating two separate divisions within the same subchapter. The purpose for separating the content into separate rules and divisions is to ensure that the rules for each type of service are clear and easy for the public to understand. The Family Reunification Services rules are being proposed for adoption in Division 1 of Subchapter G and the Family-Based Safety Services rules are being proposed for adoption in Division 2 of Subchapter G. Child Protective Services (CPS) is also updating the rules to ensure that the rules accurately reflect CPS' current policy and practice, including how CPS administers family reunification and family-based safety services.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §700.701 include: (1) deleting the content concerning family-based safety services; and (2) moving the content concerning family reunification services to newly created Division 1, Family Reunification Services, with minor, non-substantive changes.

§700.702 is being repealed and the content of the rule is being incorporated into new §700.710, concerning Services to Families, and new §700.712, concerning Provision of Family-Based Safety Services, in newly created Division 2, Family Based Safety Services.

The proposed amendments to §700.703 include: (1) deleting outdated content regarding the service levels for family reunification services as reunification services do not contain different service levels; and (2) moving the remaining rule content to newly created Division 1.

The proposed amendments to §700.704 include: (1) deleting the content concerning family-based safety services; and (2) moving the content concerning family reunification services to newly created Division 1 with no changes.

§700.705 is being repealed and the content is being incorporated into new §700.720, concerning Case Closure of Family Based Safety Services Cases, and new §700.722, concerning Case Closure Due to Removal, in newly created Division 2.

The proposed amendments to §700.706 include: (1) updating the rule to specify that when the court dismisses DFPS as conservator from the case, CPS will close its legal case but may continue provide reunification services to the family on a voluntary basis or by initiating court ordered services if the family has not been able to reduce the risk to the child so that the child is safe from abuse and neglect.; and (2) moving the rule content to newly created Division 1.

Proposed new §700.710: (1) incorporates the family-based safety services content from former §700.701(a) Services to Families concerning when family-based safety services are provided to families and children; and (2) incorporates content from former §700.702 Family-Based Safety Services which provides that family-based safety services are protective services pro-

vided to a family whose children are not in the conservatorship of DFPS.

Proposed new §700.712 incorporates: (1) the family-based safety services content from former §700.701(b), concerning Services to Families, regarding the criteria for provision of family-based safety services; and (2) the content from former §700.702, concerning Family-Based Safety Services, excluding outdated content regarding service levels as family-based safety services do not contain different service levels. The content incorporated from former §700.702 concerns: (1) when CPS provides family-based safety services, but includes updates to reflect that services are provided to a family when the family needs ongoing assistance and a judge orders services *or* a child in the home is at risk of abuse or neglect; the child cannot remain safely in the home without a safety plan or the family is unable to reduce the risk of abuse or neglect and/or ensure immediate child safety without CPS assistance; and CPS can provide or arrange for services to assist the family; and (2) how CPS provides the services, including directly or through contracts and referrals to community services.

Proposed new §700.714 specifies whom the caseworker is required to contact in the course of a family-based safety services case and how often.

Proposed new §700.716 incorporates the family-based safety services content from former §700.704, concerning Family Service Plan for Family-Based Safety Services Cases, regarding the family service plan with amendments to the timeframes for establishing and reviewing the plan; and with amendments to reflect caseworker actions when establishing the plan and after the plan is established.

Proposed new §700.718: (1) specifies that a parent's failure to participate in services for two consecutive months may result in DFPS seeking a legal action if DFPS determines there is a danger to the child's safety; and (2) indicates that if a family is unwilling to participate in a safety plan to address dangers, DFPS may assess whether it is necessary to seek removal of the child.

Proposed new §700.720: (1) incorporates content from former §700.705(a), concerning Case Closure of Family-Based Safety Services Cases, regarding when CPS can close a case but is being updated to add additional case closure criteria including when at least one child is removed from the home and DFPS is granted temporary managing conservatorship of the child; when CPS determines the family does not meet the criteria for services; when the child will be residing outside of the child's home with a relative or caregiver under a legal or informal agreement; or when the only child or parent receiving services dies and (2) specifies required caseworker actions prior to and after closing a case.

Proposed new §700.722 incorporates the content from former §700.705(b), concerning Case Closure of Family-Based Safety Services Cases, regarding when CPS will close a case due to removal of the child from the home to protect the child from abuse or neglect with clarification that CPS will explore reasonable alternatives for keeping the child safe in the home prior to removal.

FISCAL NOTE

David Kinsey, Chief Financial Officer of DFPS, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the proposed rules will be in effect:

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

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

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

(4) the proposed rules will not affect fees paid to the agency;

(5) the proposed rules will create new regulations to the extent that some of the content in the existing rules is being moved to new rules to separate the family-based safety services content and family reunification content into different rules and divisions in the same subchapter, as the current rules address both types of services in the same rules. The purpose for separating the content into separate rules and divisions is to ensure that the rules for each type of service are clear and easy for the public to understand. However, the new rules only clarify existing policy and practice without creating additional duties or regulations;

(6) the proposed rules will repeal existing regulations to the extent that the current rules that solely concern Family Based Safety Services (FBSS) are being repealed and the content from those rules is being readopted into new rules in Division 2 in the same subchapter;

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

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

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

Mr. Kinsey has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with these sections as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Pursuant to subsection (c)(7) of Texas Government Code §2001.0045, the statute does not apply to a rule that is adopted by the Department of Family and Protective Services.

PUBLIC BENEFIT

Tiffany Roper, General Counsel of DFPS, determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be that the public will be better informed regarding the current policy and practices of CPS in administering family-based safety services and family reunification services intended to protect children from and reduce the risk of abuse and neglect.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments and questions on this proposal must be submitted within 30 days of publication of the proposal in the *Texas Register.* Electronic comments and questions may be submitted to RULES@dfps.texas.gov. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services 19R13, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

SUBCHAPTER G. SERVICES FOR FAMILIES

DIVISION 1. FAMILY REUNIFICATION SERVICES

40 TAC §§700.701, 700.703, 700.704, 700.706

STATUTORY AUTHORITY

The proposed amended sections implement Subchapter C of the Texas Family Code relating to child and family services.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

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

§700.701. Services to Families.

(a) Definition. The Department of Family and Protective Services' (DFPS) Child Protective Services (CPS) Division provides [~~family-based safety services and~~] family reunification services for families. These services are provided to families and children to:

(1) protect the children from abuse and neglect;

(2) help the family reduce the risk of abuse and [~~or~~] neglect; and

[~~(3) either:~~]

[~~(A) avert the removal of the children from their home to protect them from abuse or neglect; or~~]

(3) [~~(B)~~] make it possible for the children to return home and live there safely after DFPS has removed them and placed them in substitute care as specified in Subchapters K and M of this chapter (relating to Court-Related Services and Substitute-Care Placement Services).

(b) When a child has returned home, [~~Criteria. CPS provides family-based safety services or family reunification services when:~~]

[~~(1) a child in the family is at risk of abuse or neglect;~~]

[~~(2) the family cannot reduce the risk of abuse or neglect without CPS assistance; and~~]

[~~(3)~~] CPS can provide or arrange for services to:

(1) [~~(A)~~] protect the child in the parent's home [~~or return the child home~~];

(2) [~~(B)~~] reduce the risk of abuse and neglect; and

(3) [~~(C)~~] enable the family to function effectively without CPS assistance in the future.

[~~(c) Family-based safety services and family reunification services. CPS's family-based safety services and family reunification services include:~~]

[~~(1) regular, moderate, and intensive family-based safety services; and~~]

[~~(2) regular, early intensive, and intensive family reunification services.~~]

§700.703. Family Reunification Services.

The Department of Family and Protective Services' (DFPS's) Child Protective Services (CPS) Division provides reunification services to families whose children are returning home at the end of their stay in substitute care. It does not include the services that CPS provides to families over the general course of a child's stay in substitute care, even though those services are usually directed towards family reunification. The purpose of the services is to provide support to the family and the child during the child's transition from living in substitute care to living at home. [~~There are three levels of family reunification services--regular, intensive early, and intensive, all distinguished by the level of risk in the home. Any of these services may be provided directly or through contracts.~~]

[~~(1) Regular reunification services.~~]

[~~(A) Definition. CPS provides regular reunification services to families whose children are returning home at the end of their stay in substitute care. The purpose of the services is to provide support to the family and the child during the child's transition from living in substitute care to living at home.~~]

(1) [~~(B)~~] Objectives. The objectives of reunification services are to:

(A) [~~(i)~~] ensure a smooth transition by helping the family and child prepare for and adjust to the child's return;

(B) [~~(ii)~~] help the parents build on family strengths and resources in order to manage the risk of abuse or neglect; and

(C) [~~(iii)~~] enable the family to ensure the child's safety without CPS assistance after the case is closed.

(2) [~~(C)~~] Criteria. All of the criteria specified in subparagraphs (A) - (D)[~~clauses (i) - (iv)~~] of this paragraph [~~subparagraph~~] must be satisfied before CPS provides reunification services:

(A) [~~(i)~~] at least one child was removed from the home;

(B) [~~(ii)~~] parents must have a reasonably stable living arrangement;]

(C) [~~(iii)~~] parents are working to complete goals listed on the family service plan; and

(D) [~~(iv)~~] a target date has been set for the child's transition home or the transition is in process.

[~~(2) Intensive early reunification services.~~]

[~~(A) Definition. Intensive early reunification services are provided to families when a child has been in short-term substitute care. In many of these cases the children are returned home by the~~

"14-Day Show Cause Hearing." Risk factors are high in these cases and intensive support services are needed.]

[(B) Objectives. The objectives of intensive early reunification services are to:]

[(i) provide immediate services that can help parents build on family strengths and resources in order to reduce the risk of abuse and neglect;]

[(ii) ensure the earliest possible safe return home of children who come into DFPS conservatorship; and]

[(iii) enable the family to ensure the child's safety without CPS assistance after the case is closed.]

[(C) Criteria. All of the criteria specified in clauses (i) - (iv) of this subparagraph must be satisfied before CPS provides intensive early reunification services:]

[(i) at least one child was removed from the home;]

[(ii) a plan is in place to ensure the safety of the child;]

[(iii) intensive services are likely to improve the level of functioning of these families; and]

[(iv) the parents must have a reasonably stable living arrangement.]

[(3) Intensive family reunification services.]

[(A) Definition. CPS provides intensive family reunification services to families whose children have been placed in substitute care for a longer period of time than intensive early reunification cases. Depending on the length of time a child has been in substitute care, the family may need various levels of support to rebuild the parent-child relationship. These families should be provided with a continuum of services through community agencies, CPS services, and extended family support. These resources should be used to assist the child and family through the reunification process.]

[(B) Objectives. The objectives of intensive family reunification services are to:]

[(i) ensure a smooth transition by helping the family and child prepare for and adjust to the child's return;]

[(ii) help the parents build on family strengths and resources in order to reduce the risk of abuse or neglect; and]

[(iii) enable the family to ensure the child's safety without CPS assistance after the case is closed.]

[(C) Criteria. All of the criteria specified in clauses (i) - (v) of this subparagraph must be satisfied before CPS provides intensive family reunification services:]

[(i) at least one child was removed from the home;]

[(ii) the situation is high risk and the permanency plan is family reunification;]

[(iii) the parents must have a reasonably stable living arrangement;]

[(iv) the parents are working to complete goals listed on the family service plan; and]

[(v) a plan is in place to ensure the safety of the child.]

§700.704. Family Service Plan for [Family-Based Safety Services Cases and] Family Reunification Services Cases.

(a) Initial time frame. Within 45 days after the case is opened for [family-based safety services, as defined in §700.702 of this title (relating to Family-Based Safety Services), or] family reunification services, as defined in §700.703 of this title (relating to Family Reunification Services), the Department of Family and Protective Services' (DFPS's) Child Protective Services (CPS) Division must establish a detailed written plan of service for the family.

(b) Purposes. The purposes of the family service plan for families receiving [family-based safety services or] family reunification services are to:

(1) - (2) (No change.)

(c) Required content. The family service plan must:

(1) - (7) (No change.)

(8) meet federal and state laws[, including the DFPS Licensing Minimum Standards as outlined in the CPS Handbook, Section 6400, Case Planning].

(d) - (e) (No change.)

§700.706. Case Closure of Family Reunification Services Cases.

(a) Case closure. If the court has dismissed the Department of Family and Protective Services as conservator, Child Protective Services (CPS) Division will [may] close the legal case. However, CPS may continue to provide services to the family on a voluntary basis or by initiating court ordered services if the family has not been able to reduce the risk to the child so that the child is safe from abuse and neglect. [if:]

[(1) the family has reduced the risk to the child so that the child is safe from abuse and neglect and the family appears capable of managing the remaining risk without outside assistance; or]

[(2) the family appears capable of reducing the risk to the child with assistance from sources other than CPS, and is willing and able to rely on that assistance.]

(b) (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 May 21, 2021.

TRD-202102051
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 4, 2021
For further information, please call: (512) 438-3397

♦ ♦ ♦

40 TAC §700.702, §700.705

The proposed repeals implement Subchapter C of the Texas Family Code, relating to child and family services.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

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

§700.702. Family-Based Safety Services.
§700.705. Case Closure of Family-Based Safety Services Cases.

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 May 21, 2021.

TRD-202102052
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 4, 2021
For further information, please call: (512) 438-3397

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DIVISION 2. FAMILY-BASED SAFETY SERVICES

40 TAC §§700.710, 700.712, 700.714, 700.716, 700.718, 700.720, 700.722

The proposed new sections implement Subchapter C of the Texas Family Code, relating to child and family services.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

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

§700.710. Services to Families.

Family-based safety services are protective services provided to a family whose children are not in the conservatorship of the Department of Family and Protective Services (DFPS). DFPS's Child Protective Services (CPS) Division provides family-based safety services to families and children that need CPS assistance to:

(1) protect the children from abuse and neglect;

(2) help the family reduce the risk of future abuse or neglect; and

(3) prevent the removal of the children from their home.

§700.712. Provision of Family-Based Safety Services.

(a) CPS provides family-based safety services when:

(1) a child in the family is at risk of abuse or neglect;

(2) the child cannot remain safely in the home without a Safety Plan, or the family cannot reduce the risk of abuse or neglect and/or ensure immediate child safety without CPS assistance; and

(3) CPS can provide or arrange for services to:

(A) keep the child safe in the home;

(B) reduce the risk of abuse or neglect; and

(C) enable the family to function effectively without CPS assistance in the future.

(b) CPS also provides family-based safety services when a family whose children are not in the conservatorship of the Department needs ongoing CPS assistance and a judge orders a family to participate in the services.

(c) Services may be provided directly or through contracts and may include referrals to community resources.

§700.714. Contacts for Family-Based Safety Services.

(a) After the family-based safety services case is opened, the caseworker will make an initial face-to-face contact with:

(1) each child who will be receiving family-based safety services; and

(2) each parent who will be receiving family-based safety services.

(b) Each month, or more frequently if appropriate, while a family-based safety services case is open, the caseworker must make on-going face-to-face contact with each child and parent in the household of concern who is included on the most recent family service plan as described in §700.704 of this subchapter (relating to Family Service Plan for Family Reunification Services Cases), and with any PCSP caregiver. Whenever possible, the face-to-face contact with the child will be in the home and in private as appropriate for the child's age and development.

§700.716. Family Service Plan for Family-Based Safety Services Cases.

(a) After initial contacts are made, as defined in §700.714, (relating to Contacts for Family-Based Safety Services), the Department of Family and Protective Services' (DFPS's) Child Protective Services (CPS) Division must establish a detailed written service plan and initiate any needed services for the family.

(b) The purposes of the family service plan for families receiving family-based safety services are to:

(1) establish a structured, time-limited process for providing services; and

(2) ensure that services progress as quickly as possible towards enabling the family to:

(A) reduce the risk of abuse or neglect; and

(B) function effectively without CPS assistance.

(c) The family service plan must:

(1) include a statement of CPS concerns;

(2) include family needs and strengths and resources that can be utilized to help the family reduce the risk of abuse and neglect;

(3) identify the goals or changes needed to reduce the level of risk;

(4) specify the required actions the family must complete during the effective period of the plan in order to make the needed changes;

(5) describe the services CPS will provide to help the family complete those actions;

(6) indicate how CPS will evaluate the family's progress in completing each required action and goal;

(7) indicate the period of time and frequency of the required actions and services; and

(8) meet federal and state laws, including the Americans with Disabilities Act.

(d) The caseworker must attempt to work with the parents to develop the family service plan. After completing the plan, the caseworker must ask the parents to sign it, and must give them a copy of

it. If either parent will not sign the plan, the caseworker must document on the plan the reasons why a parent will not sign and must give the parent a copy of the plan. The caseworker must ensure that each individual signing the plan understands and agrees to their responsibilities, the potential consequences of non-compliance, and the actions or circumstances needed to complete the plan and close the case with no further involvement by CPS.

(e) Every month while a family-based safety services case is open, the caseworker must:

(1) make reasonable efforts to contact any provider who is providing services as part of the family service plan and obtain information about the family's progress;

(2) gather any other information or documentation from collaterals related to child safety or the family service plan;

(3) evaluate all information gathered and document:

(A) whether family-based safety services are still needed to ensure child safety; and

(B) whether any changes are needed to the family service plan, an existing Safety Plan, or an existing parental child safety placement. The caseworker must document reasons for any changes.

§700.718. Lack or Refusal of Family Participation.

(a) If a parent fails to participate in services for two consecutive months and the Department of Family and Protective Services (DFPS) determines that there are danger indicators impacting child safety, DFPS may seek legal action, such as a court order for removal.

(b) If a family is unwilling to participate in a safety plan to address dangers to the child, DFPS will determine if it is necessary to seek removal of the child from the home.

§700.720. Case Closure of Family-Based Safety Services Cases.

(a) The Department of Family and Protective Services' (DFPS's) Child Protective Services (CPS) Division closes family-based safety services cases when:

(1) CPS determines after the family was referred that the family does not meet the criteria for family-based safety services.

(2) CPS services are no longer needed because the family:

(A) has reduced the risk to the child so that the child is safe from abuse and neglect and the family appears capable of managing the remaining risk without outside assistance; or

(B) appears capable of reducing the risk to the child with assistance from sources other than CPS, and the family is willing and able to rely on that assistance.

(3) The family has moved out of state or cannot be found after reasonable efforts to locate the family.

(4) There is not enough evidence of a threat to the child's immediate and short-term safety for legal intervention and either:

(A) the family refuses to accept further services; or

(B) CPS has already offered or provided all available services that:

(i) are appropriate to the family's needs, or

(ii) the family has requested and is eligible to receive.

(5) The child will be residing outside of the home of the parent under a legal agreement or an informal agreement with a relative or other caregiver.

(6) At least one child is removed from the home and the court grants DFPS temporary managing conservatorship of the child.

(7) The only child or parent receiving services dies.

(b) Before submitting the case to the supervisory for case closure, the caseworker must:

(1) have a closing staffing with the supervisor; and

(2) complete a closing summary that explains the rationale for the closure decision.

(c) After closing the case, the caseworker must send a case closure letter to parents and legal guardians who have been receiving family-based safety services. Case closure letters are not required if the child has been removed from the home, the family cannot be located, or the only child died.

§700.722. Case Closure Due to Removal.

(a) When family-based safety services are provided and the family is still unable to protect a child from abuse or neglect in the immediate or short-term future, CPS staff may initiate an emergency or court-ordered removal of the child from the home. Substitute care services are then provided to the child and family.

(b) Prior to closing a family-based safety services case due to removal of the child as described in §700.714, (relating to Contacts for Family-Based Safety Services), CPS staff will explore reasonable alternatives for keeping the child safe from abuse and neglect in the home. The child is removed only when there is no other reasonable way to protect the child from abuse or neglect in the immediate or short-term future.

(c) Whenever possible, CPS staff, together with the family, make the decision to remove the child from the home.

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 May 21, 2021.

TRD-202102053
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 4, 2021
For further information, please call: (512) 438-3397

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 28. TEXAS DEPARTMENT OF INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §21.2824

The Texas Department of Insurance withdraws the proposed repeal of §21.2824 which appeared in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8483).

Filed with the Office of the Secretary of State on May 18, 2021.

TRD-202101992
James Person
General Counsel
Texas Department of Insurance
Effective date: May 18, 2021
For further information, please call: (512) 676-6584

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. 9-1-1 SERVICE--STANDARDS

1 TAC §251.12

The Commission on State Emergency Communications (CSEC) adopts amendments to §251.12, concerning contracts for 9-1-1 service with a Regional Planning Commission (RPC), without changes to the proposed text as published for comment in the April 2, 2021, issue of the *Texas Register* (46 TexReg 2131). The adopted rule will not be republished.

REASONED JUSTIFICATION

Per Health and Safety Code §771.078, CSEC is required to adopt §251.12 to provide standard provisions for its biennial contract with an RPC to provide 9-1-1 service. The primary purpose of the amendments to §251.12 is to align the rule with CSEC Program Policy Statements (PPS). Specifically, section 251.12(d) is amended to align with PPS 001, *Regional Planning Commission Advance Quarterly Funding* by replacing "start-up" with "advance" funding, clarifying that the funding is provided quarterly rather than once a year, and limiting the permitted uses of advance quarterly funding to funding 9-1-1 service operating costs. The remaining amendments, sections 251.12(a), (b), (b)(1), (b)(2), (b)(4), (b)(6)-(7), and (c), are non-substantive changes that are either stylistic/grammatical *(e.g.,* change "RPCs" from plural to singular "RPC" throughout the rule); or clarify current text *(e.g.,* add "public safety" prior to "answering points" in subsection (b)(4) to reflect the semantically correct term).

PUBLIC COMMENT AND AGENCY RESPONSE

CSEC received no comments on proposed amended §251.12.

STATUTORY AUTHORITY

The amended section is adopted pursuant to Health and Safety Code §§771.051, 771.0511, 771.055 - .057, and 771.078.

No other statute, article, or codes are affected by the adoption.

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 May 20, 2021.

TRD-202102022

Patrick Tyler
General Counsel
Commission on State Emergency Communications
Effective date: June 9, 2021
Proposal publication date: April 2, 2021
For further information, please call: (512) 305-6915

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS

DIVISION 2. PROGRAM FOR HORSES

16 TAC §303.92

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §303.92, Thoroughbred Rules, with changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1821). The rule will be republished. The changes from the draft as proposed are updated statutory citations as a result of the codification of the Texas Racing Act that were inadvertently omitted from the proposal. These non-substantive changes do not change the nature of the amendments as to constitute a different rule. The amendments, requested by the Texas Thoroughbred Association, expand eligibility for full Texas-bred awards to certain situations in which a mare dies before all usual requirements are satisfied for a foal to qualify.

PUBLIC COMMENTS

No comments were submitted in response to the proposal of these amendments.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code § 2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the amendments.

§303.92 Thoroughbred Rules

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

(1) Horse Owner--A person who is owner of record of an accredited Texas-bred horse at the time of a race.

(2) Breeder--The owner of the dam at the time of foaling as stated on the foal's Jockey Club certificate of registration.

(3) Stallion Owner--A person who is the owner of record, at the time of conception, of the stallion that sired the accredited Texas-bred horse.

(4) Accredited Texas-bred Thoroughbred--A horse registered with the Jockey Club, accredited with the breed registry and foaled in Texas, out of a mare accredited with the breed registry that is permanently domiciled in Texas.

(5) Accredited Texas Thoroughbred Mare--A mare registered with the Jockey Club, accredited with the breed registry, and permanently domiciled in Texas except for racing and breeding privileges. Annual reproductive activity of the mare may be required to be reported to the breed registry in writing via photocopy of the Live Foal Report/No Foal Report submitted annually to the Jockey Club.

(6) Accredited Texas Thoroughbred Stallion--A stallion registered with the Jockey Club, accredited with the breed registry, and standing in Texas. The breed registry must be notified in writing within 10 calendar days each time the stallion leaves or enters the State of Texas. A photocopy of the annual Report of Mares Bred may be required to be submitted to the breed registry office on or before the date required by the Jockey Club (August 1). Stallion owners are eligible to receive stallion awards only from offspring sired in Texas after the stallion has become accredited with the breed registry and applicable administrative fees have been paid.

(7) Breed Registry--The Texas Thoroughbred Association, the official breed registry for thoroughbred horses as designated in the Act.

(8) Bred--A mare is considered to have been bred by a stallion if the physical act of breeding has occurred and the mare is listed on the stallion's Report of Mares Bred filed with the Jockey Club for a particular breeding season and is not subsequently bred during that breeding season to a stallion not accredited by the breed registry. A mare does not have to become pregnant or produce a live foal to be considered bred, so long as these criteria are met.

(b) Organizational Structure. The breed registry shall comply with the provisions of the Act and Rules and shall further maintain substantially the following:

(1) Records of the breed registry shall be kept so as to identify separately the activities of the accredited Texas-bred program.

(2) Management of the accredited Texas-bred program shall be under the control of the board of directors of the breed registry and may be exercised through a committee or other governing body appointed by and accountable to the board of directors. The committee shall keep records or minutes of its proceedings and shall establish its operational procedures. The committee's records must be available for inspection at any time by the commission at the office of the breed registry. The committee is authorized to reasonably interpret the definitions and standards of this section, subject to approval by the board of directors, whose decision in such matters shall be final.

(3) The committee shall prepare and implement a budget on an annual basis, subject to prior approval of the board of directors. The budget may contain provisions for reserves for contingencies deemed appropriate. The breed registry may develop and implement a fair system for sharing and allocating expenses and operational costs between breed registry activities and accredited Texas-bred program activities, taking into consideration the promotion and improvement of thoroughbred horses in Texas. In no event may funds that are dedicated by law to fund the incentive awards program be used for any other purpose. Any funds or services advanced or provided by the breed registry to the accredited Texas-bred program may be offset or otherwise recouped upon proper accounting. The committee is authorized to set and collect application and administration fees.

(4) From time to time, additional accredited Texas-bred awards become due after the fact of initial awards calculation and timely distribution for each race meet. The additional awards are most often due as the result of a disqualification with subsequent revised order of finish and redistribution of purse funds. Other factors may include incomplete or incorrect data received by the breed registry. In all instances, the changes are beyond the control of the breed registry. The committee shall establish an awards redistribution fund for each racetrack, not to exceed 5% of the total awards payout for each racetrack. The committee shall determine the amount of the redistribution fund for each racetrack and shall review the amount annually to make appropriate adjustments. The committee shall also establish a minimum fund balance for each racetrack. The fund shall be replenished only when a minimum fund balance is reached. Redistribution funds shall be derived from accredited Texas-bred awards funds generated from multiple wagers at each racetrack and shall be set aside before any regular accredited Texas-bred awards are calculated or paid. Redistribution funds shall only be used to pay accredited Texas-bred awards that become due after the initial calculation and timely distribution of awards payable for each race meet. In the event that, after initial awards calculation, a disqualification or other change in accredited Texas-bred awards that cannot be paid because a horse that is not eligible for awards moves up in the order of finish, those awards shall be added to the redistribution fund.

(5) Eligibility for awards under the accredited Texas-bred program may not be conditioned upon membership in an organization.

(c) Procedure for Payment of Awards.

(1) Conditions precedent for payment of awards are:

(A) If a horse is leased, there must be on file with the breed registry a lease agreement specifying which party shall receive award money.

(B) Breeder's Awards will be paid only on an accredited Texas-bred Thoroughbred whose dam was accredited with the breed registry either prior to foaling the subject horse or within the same calendar year of foaling the subject horse and is covered by the definition set forth in §2021.003(50) of the Act. A horse covered by §2021.003(50)(C) of the Act is eligible for only one-half of the incentives awarded pursuant to §2028.103 and §2028.105 of the Act, except as provided by subparagraph (C) of this paragraph.

(C) If an accredited Texas-bred Thoroughbred mare dies during or after foaling a foal that was not sired by an accredited Texas-bred stallion and before she can be bred back to an accredited Texas-bred Thoroughbred stallion during that breeding season, said foal shall be eligible for full accredited Texas-bred breeder awards provided that, not later than August 1 of the year of foaling, the breeder files an official death report with the Jockey Club and submits the following documentation to the Texas Thoroughbred Association via certified mail or other return receipt delivery method:

(i) a copy of the Jockey Club death report;

(ii) a completed official Texas Thoroughbred Association death report; and

(iii) a veterinarian's statement of the date, location, and cause of the mare's death.

(D) Accreditation fees are non-refundable after a work order has been assigned to an eligible entry. If a horse is ineligible, the fee will be refunded to the applicant.

(E) When any accredited Texas-bred horse becomes breeding stock, it must be converted, with the breed registry, to an accredited mare or stallion.

(F) All applicable fees set by the breed registry must have been paid.

(G) All participants in the accredited Texas-bred program must provide the breed registry in writing the identity of the authorized payee and the address to which awards are to be sent. Any change in ownership, payment entitlement, or address shall not be effective unless and until it is provided to the breed registry in writing. The breed registry may rely on the information so provided to it.

(2) Owner's awards.

(A) Any accredited Texas-bred Thoroughbred that finishes first, second, or third in any race in Texas (with the exception of a stakes race restricted to accredited Texas-breds) shall receive an owner's incentive award. All owner's incentive awards shall be noted in each association's condition book and race program so as to identify the availability of the accredited Texas-bred program owner incentive awards.

(B) An accredited Texas-bred Thoroughbred horse that finishes first, second, or third in a race, other than a Texas-bred race, shall receive an owner's bonus award as a purse supplement, as provided by §2028.107 of the Act.

(3) Award funds derived by the breed registry pursuant to §2028.103 of the Act may be allocated and disbursed by the breed registry to purses at Texas associations for races restricted to accredited Texas-bred thoroughbred horses for special event races or days.

(4) Funds actually received from a greyhound association pursuant to §2028.202 of the Act shall be used as purses by the breed registry within a reasonable time, not to exceed 18 months from date of receipt.

(5) If a share of the breakage cannot be distributed to the person who is entitled to a share, the breed registry shall retain that share. Thereafter, a notice of the entitlement shall be published in the Texas Thoroughbred magazine for the first three issues of the second calendar year after accrual of the entitlement. If the entitlement is not claimed before August 31 following such publication, the funds shall be transferred to the breed registry's general account. If the person entitled to the share thereafter makes a claim in a form acceptable to the breed registry, the breed registry shall pay such person the amount of the share.

(d) Procedure for hearings. The following provisions shall apply to hearings on matters pertaining to administration of the accredited Texas-bred program.

(1) Right to a hearing. If the breed registry proposes to deny an application for accreditation, revoke an accreditation previously granted, or withhold payment of an award, the person(s) affected shall be notified in writing of the proposed action and the basis therefore. The action shall become final, unless within 10 days of the date of receipt of the notice by the affected person(s), the person(s) files with the breed registry a written request for a hearing before its board of directors. On timely receipt of a request, the board of directors shall conduct a hearing. The board of directors, in its sole discretion, may grant or conduct a hearing on any other matter or issue raised by the administration of the accredited Texas-bred program.

(2) Notice of hearing. The board of directors shall send written notice of the hearing to all affected parties. The notice must be received at least 10 days prior to the date of the hearing, must specify the time and place of hearing, must contain a statement of the matters to be considered and possible action to be taken, and must advise the recipient(s) of the right to appear and present evidence.

(3) Conduct of hearing. The breed registry shall have the burden of proof in any proceeding for denial or revocation of accreditation. In all other matters, the burden of proof is on the party seeking action by the breed registry. Each party shall be entitled to representation by legal counsel. The board of directors may determine the order and length of the proceeding and shall allow each party the opportunity to submit sworn testimony, documents, and argument as the party may desire, but formal rules of evidence shall not apply. All witnesses are subject to cross-examination and to questions from the members of the board of directors. A record of the proceedings shall be made and kept, and a transcript shall be provided to any party who requests and pays in advance for same.

(4) Decision. At any time after the closing of the hearing, the board of directors may issue its decision, which shall be in writing and which shall state the findings and reasons for the action taken. In addition to ruling on the issues presented, the decision may require any party to reimburse the breed registry for its expense and attorneys fees incurred in the preparation for and conduct of the hearing and may require repayment with lawful interest to the breed registry of any funds found to have been wrongfully or improperly received. The decision of the board of directors is final and not subject to review. A copy of the decision shall be filed with the Commission and shall be published in the next issue of the Texas Thoroughbred, and thereafter all persons shall have constructive notice of the decision and its contents.

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 May 18, 2021.

TRD-202101996
Chuck Trout
Executive Director
Texas Racing Commission
Effective date: June 7, 2021
Proposal publication date: March 26, 2021
For further information, please call: (512) 833-6699

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CHAPTER 309. RACETRACK LICENSES AND OPERATIONS
SUBCHAPTER B. OPERATIONS OF RACETRACKS
DIVISION 3. OPERATIONS

16 TAC §309.168

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §309.168, Hazardous Weather, without changes to the text as proposed in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1822). The rule will not be republished. The amendments increase safety at the racetrack by changing the standards for the suspension of racing in the event of lightning within eight miles of a racetrack instead of six and would empower the stewards to halt racing in the event

of hazardous weather. These changes are consistent with the Association of Racing Commissioners International's model rules.

REASONED JUSTIFICATION

The reasoned justification for these amendments is increased safety for racing participants during severe weather incidents.

PUBLIC COMMENTS

No comments were submitted in response to the proposal of these amendments.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Chuck Trout
Executive Director
Texas Racing Commission
Effective date: June 7, 2021
Proposal publication date: March 26, 2021
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 30. ADMINISTRATION
SUBCHAPTER A. STATE BOARD OF EDUCATION: GENERAL PROVISIONS

19 TAC §30.1

The State Board of Education (SBOE) adopts an amendment to §30.1, concerning petitioning for the adoption of rule changes. The amendment is adopted with changes to the proposed text as published in the March 5, 2021 issue of the *Texas Register* (46 TexReg 1444) and will be republished. The adopted amendment updates the SBOE petition procedures to allow for electronic submission of a petition authorized under Texas Government Code (TGC), §2001.021.

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

The adopted amendment to §30.1 updates the SBOE's petition procedures, including the petition form included as Figure: 19 TAC §30.1(a), to improve efficiency by ensuring that an interested person can submit the petition for rulemaking electronically. In addition, the adopted amendment to Figure: 19 TAC §30.1(a) specifies one Texas Education Agency (TEA) division as the collection point for all petitions submitted to the SBOE. This will ensure timely acknowledgement and review of a petition by TEA staff for consideration by the SBOE at a future meeting.

Since published as proposed, a change was made to Figure: 19 TAC §30.1(a) that allows the petitioner to provide an email address on the petition form. This addition will facilitate timely communication on the acknowledgement, status, and final decision of a petition.

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

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

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

The adopted amendment also includes technical edits throughout §30.1 to improve readability.

The SBOE approved the proposed amendment for first reading and filing authorization at its January 29, 2021 meeting and for second reading and final adoption at its April 16, 2021 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2021-2022 school year. The earlier effective date will allow an interested person to submit a petition electronically, which currently is not an option. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began March 5, 2021, and ended at 5:00 p.m. on April 9, 2021. The SBOE also provided an opportunity for registered oral and written comments at its April 2021 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comment received and the corresponding response.

Comment: A teacher who served as a work group member for the Physics Texas Essential Knowledge and Skills (TEKS) commented that in considering the amount of content in the original draft of the proposed new course, the work group's decisions were based on allowing time for students to sufficiently explore each topic. The commenter believes some of the language proposed by the SBOE adds time to the work group's original content. The commenter added that educators are encouraged to add content to their classrooms when appropriate.

Response: This comment is outside the scope of the proposed rulemaking. The public comment period for the new high school

science TEKS for Biology, Chemistry, Integrated Physics and Chemistry, and Physics began on October 9, 2020, and ended on November 13, 2020, and the new courses took effect April 28, 2021.

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

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

§30.1. Petition for Adoption of Rule Changes.

(a) Any interested person as defined in Texas Government Code (TGC), §2001.021(d), may petition for the adoption, amendment, or repeal of a rule of the State Board of Education (SBOE) by filing a petition on the form provided in this subsection. The petition shall be signed and submitted to the Texas Education Agency (TEA). The TEA staff responsible for the area with which the rule is concerned shall evaluate the merits of the petition to determine whether to recommend that rulemaking proceedings be initiated or that the petition be denied. Figure: 19 TAC §30.1(a)

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

(1) Where possible, the TEA staff recommendation concerning the petition shall be placed on the next SBOE agenda, and the SBOE shall act on the petition within 60 calendar days.

(2) Where the time required to review the petition or the scheduling of SBOE meetings will not permit the SBOE to act on the petition within the required 60 calendar days, the TEA staff shall respond to the petitioner within the required 60 calendar days, notifying the petitioner of the date of the SBOE meeting at which the TEA staff recommendation will be presented to the SBOE for action.

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

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

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

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

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

(4) the petitioner files a petition:

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

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

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

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

The agency certifies that legal counsel has reviewed the 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 May 24, 2021.

TRD-202102086
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: June 13, 2021
Proposal publication date: March 5, 2021
For further information, please call: (512) 475-1497

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER B. SPECIAL PURPOSE SCHOOL DISTRICTS

19 TAC §61.111

The State Board of Education (SBOE) adopts new §61.111, concerning applicability of state law to Boys Ranch Independent School District. The new section is adopted without changes to the proposed text as published in the March 5, 2021 issue of the *Texas Register* (46 TexReg 1446) and will not be republished. The adopted new rule identifies provisions of the Texas Education Code (TEC) that are not applicable to Boys Ranch Independent School District.

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

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

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

Adopted new §61.111 establishes the section's applicability only to Boys Ranch Independent School District and identifies the provisions of the TEC that do not apply to the special purpose school district.

The SBOE approved the proposed new section for first reading and filing authorization at its January 29, 2021 meeting and for second reading and final adoption at its April 16, 2021 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new section for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2021-2022 school year. The earlier effective date will allow Boys Ranch Independent School District to begin planning for implementation before the beginning of the 2021-2022 school year. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began March 5, 2021, and ended at 5:00 p.m. on April 9, 2021. The SBOE also provided an opportunity for registered oral and written comments at its

April 2021 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received on the proposal.

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

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

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 May 24, 2021.

TRD-202102087
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: June 13, 2021
Proposal publication date: March 5, 2021
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.11

The Texas State Board of Pharmacy adopts amendments to §291.11, concerning Operation of a Pharmacy. These amendments are adopted without changes to the proposed text as published in the April 2, 2021, issue of the *Texas Register* (46 TexReg 2144). The rule will not be republished.

The amendments correct citation references and a short title reference.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations 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 May 20, 2021.

TRD-202102031
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: June 9, 2021
Proposal publication date: April 2, 2021
For further information, please call: (512) 305-8010

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SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.34

The Texas State Board of Pharmacy adopts amendments to §291.34, concerning Records. These amendments are adopted without changes to the proposed text as published in the April 2, 2021, issue of the *Texas Register* (46 TexReg 2145). The rule will not be republished.

The amendments update references to DEA 222 form requirements to be consistent with federal regulations and clarify that a pharmacist may electronically sign the data entry attestation statement.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations 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 May 20, 2021.

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Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: June 9, 2021
Proposal publication date: April 2, 2021
For further information, please call: (512) 305-8010

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.75

The Texas State Board of Pharmacy adopts amendments to §291.75, concerning Records. These amendments are adopted

without changes to the proposed text as published in the April 2, 2021, issue of the *Texas Register* (46 TexReg 2155). The rule will not be republished.

The amendments update references to DEA 222 form requirements to be consistent with federal regulations.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations 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 May 20, 2021.

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Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: June 9, 2021
Proposal publication date: April 2, 2021
For further information, please call: (512) 305-8010

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22 TAC §291.76

The Texas State Board of Pharmacy adopts amendments to §291.76, concerning Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center. These amendments are adopted without changes to the proposed text as published in the April 2, 2021, issue of the *Texas Register* (46 TexReg 2159). The rule will not be republished.

The amendments update references to DEA 222 form requirements to be consistent with federal regulations.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations 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 May 20, 2021.

TRD-202102035
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: June 9, 2021
Proposal publication date: April 2, 2021
For further information, please call: (512) 305-8010

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CHAPTER 315. CONTROLLED SUBSTANCES

22 TAC §315.3

The Texas State Board of Pharmacy adopts amendments to §315.3, concerning Prescriptions. These amendments are adopted without changes to the proposed text as published in the April 2, 2021, issue of the *Texas Register* (46 TexReg 2168). The rule will not be republished.

The amendments extend the time period for Schedule II controlled substance prescriptions to be valid to no longer than 30 days to be consistent with federal law.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: June 9, 2021
Proposal publication date: April 2, 2021
For further information, please call: (512) 305-8010

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22 TAC §315.5

The Texas State Board of Pharmacy adopts amendments to §315.5, concerning Pharmacy Responsibility - Generally - Effective September 1, 2016. These amendments are adopted without changes to the proposed text as published in the April 2, 2021, issue of the *Texas Register* (46 TexReg 2169). The rule will not be republished.

The amendments remove the effective date from the short title and extend the time period for Schedule II controlled substance prescriptions to be valid to no longer than 30 days to be consistent with federal law.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occu-

pations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations 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 May 20, 2021.

TRD-202102037
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: June 9, 2021
Proposal publication date: April 2, 2021
For further information, please call: (512) 305-8010

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TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

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

25 TAC §702.19

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts an amendment to 25 TAC §702.19, concerning Restriction on Communication Regarding Pending Grant Application, without changes to the proposed amendment as published in the March 5, 2021, issue of the *Texas Register* (46 TexReg 1457). The rule will not be republished.

The amendment relates to an exception to the general communication prohibition between a grant applicant and a member of the Scientific Research and Prevention Programs Committee (SRPP) regarding the substance of a pending application.

Reasoned Justification

The amendment to §702.19(b) allows an SRPP member, assigned by the Product Development Review Council (PDRC) Chairperson, to participate in interviewing a grant applicant as part of the business operations and management due diligence and/or intellectual property review process conducted by CPRIT contractors. The assigned SRPP member will relay information to the full PDRC to assist in their grant application review.

Summary of Public Comments and Staff Recommendation

CPRIT received one public comment from Mr. David Shubert, President of Magnolia Tejas Corporation, in favor of adoption. CPRIT staff recommends proceeding with adoption of the amendment to §702.19(b).

Statutory Authority

CPRIT adopts the rule change under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

Certification

The Institute hereby certifies that Kristen Pauling Doyle, Deputy Executive Officer and General Counsel, reviewed the adoption of the rule and found it to be a valid exercise of the agency's legal authority.

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 May 21, 2021.

TRD-202102048
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Effective date: June 10, 2021
Proposal publication date: March 5, 2021
For further information, please call: (512) 305-8487

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CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.10

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts an amendment to 25 TAC §703.10, concerning Awarding Grants by Contract, without changes to the proposed amendment as published in the March 5, 2021, issue of the *Texas Register* (46 TexReg 1459). The rule will not be republished.

In addition to correcting grammar and punctuation for clarity, the amendment requires a grant recipient to include applicable CPRIT grant identification numbers when acknowledging CPRIT funding in publications.

Reasoned Justification

CPRIT requires grant recipients to acknowledge Institute funding when publishing the research results. The amendment to § 703.10(c)(3) clarifies that, beginning September 1, 2021, acknowledgments must include applicable grant identification numbers. Including grant identification numbers helps the Institute track outcomes of grant awards. The Institute has also made non-substantive grammar and punctuation corrections throughout § 703.10.

Summary of Public Comments and Staff Recommendation

CPRIT did not receive any public comments regarding the amendment to § 703.10(c)(3); CPRIT staff recommends proceeding with adoption.

Statutory Authority

CPRIT adopts the rule change under the authority of the Texas Health and Safety Code Annotated, § 102.108, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

Certification

The Institute hereby certifies that Kristen Pauling Doyle, Deputy Executive Officer and General Counsel, reviewed the adoption of the rule change and found it to be a valid exercise of the agency's legal authority.

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 May 21, 2021.

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Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
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Proposal publication date: March 5, 2021
For further information, please call: (512) 305-8487

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING

SUBCHAPTER D. APPLICATION PROCESS

DIVISION 13. ADDITIONAL CONSIDERATIONS FOR CERTAIN RESIDENTIAL OPERATIONS

26 TAC §§745.491, 745.493, 745.495, 745.497

The Texas Health and Human Services Commission (HHSC) adopts new §§745.491, 745.493, 745.495, and 745.497 in Title 26, Texas Administrative Code (TAC), Chapter 745, Licensing, Subchapter D, new Division 13, concerning Additional Considerations for Certain Residential Operations.

New §745.491 and §745.493 are adopted with changes to the proposed text as published in the February 26, 2021, issue of the *Texas Register* (46 TexReg 1325). These rules will be republished.

New §745.495 and §745.497 are adopted without changes to the proposed text as published in the February 26, 2021, issue of the *Texas Register* (46 TexReg 1325). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the rules is to address the subject matter of emergency rules adopted in December 2020, as the emergency rules may only be effective for 120 days and for an extension of not more than 60 days. Those emergency rules require Child Care Regulation (CCR) to consider the previous five-year compliance history of related operations when evaluating an application for a new residential child-care operation license, if the applicant intends to contract with the Texas Department of Family and Protective Services (DFPS) or a Single Source Continuum Contractor (SSCC) to care for children in the conservatorship of DFPS. These rules are virtually the same as the emergency rules, with the following exceptions: 1) updating the references of "CCR" to "Licensing" to be consistent with how Child Care Regulation is referenced throughout Chapter 745; and 2) not including the terms and definitions for "Licensing" and "Controlling person" that are in emergency rule §745.10201, because those terms are already defined in §745.11 and §745.21 respectively. As further described below, the adopted rules will also not include the term and definition for "Single Source Continuum Contractor" that is in emergency rule §745.10201, as this term is no longer necessary due to edits in response to a comment.

These rules require CCR to conduct the review when an applicant has been operating in a different location, has previously closed an operation, or has significant ties to another operation that is changing ownership. These rules also require the continuation of heightened monitoring as a condition of a new license if a previous or related operation is on heightened monitoring, met the criteria for heightened monitoring in the previous five years but was not placed on heightened monitoring, or was placed on heightened monitoring in the previous five years and did not successfully complete it.

The Executive Commissioner of HHSC adopted the emergency rules because of a December 18, 2020, order in the *M.D. v. Abbott* litigation. In that order, the federal court identified the need for CCR to evaluate compliance histories and continuity of heightened monitoring in evaluation of license applications to ensure children in the conservatorship of DFPS, who are placed in residential child-care operations licensed by HHSC, are not placed at an unreasonable risk of serious harm in violation of their Fourteenth Amendment substantive due process rights.

The emergency rules and these new rules in Chapter 745 comply with this order, and other orders by the same federal court finding, that an unreasonable risk of serious harm exists in the absence of certain actions by HHSC to protect the health, safety, and welfare of certain children.

COMMENTS

The 31-day comment period ended March 29, 2021. During this period, HHSC received five comments regarding the proposed rules from one commenter representing the Texas Alliance of Child and Family Services, which is an advocacy organization. A summary of comments relating to the rules and CCR's responses follows:

Comment: Regarding §745.491, the commenter recommended aligning the definition of "Single Source Continuum Contractor" with provisions already in law, such as Subchapter B-1 of Chapter 264, Texas Family Code. The commenter indicated that while an SSCC may be a child-placing agency as contemplated by the proposed definition, the existing statutes do not compel it. The commenter also stated that, in addition to supervising child-placing activities, the SSCC generally oversees a network of various foster care providers who are, in turn, generally responsible for their child-placing and child-care activities within the umbrella of the SSCC's network.

Response: HHSC agrees with the comment and is amending §745.491 to remove the definition of "single source continuum contractor." HHSC is also amending §745.493 to reference the applicability of the new division to an SSCC as defined by Subchapter B-1 of Chapter 264, Texas Family Code. These changes do not affect the nature and scope of the rules. Rather, they accomplish the intent of the published rules in a way that no longer requires the definition that was the subject of this comment.

Comment: Regarding §745.495, the commenter recommended CCR provide some general parameters to aid the public's under-

standing of how the license application will be reviewed and how history will be considered.

Response: HHSC declines to revise the rule because 26 TAC Chapter 745, Subchapter L, regarding Enforcement Actions, addresses when HHSC may deny an applicant a permit. The rules in that subchapter already inform applicants, operations, and the public of enforcement actions that CCR may take if a review of compliance history determines any of those actions are necessary.

Comment: Regarding §745.495(a)(3)(A), the commenter asked CCR to consider making allowance in the rules for personnel, particularly administrators, who are brought into an organization that is struggling in the interest of helping drive improvement. The commenter indicated the new rule presumes an administrator is in control of organizational, program, and practice decisions or standards, but that is not the case. The commenter indicated the rule could penalize an administrator for five additional years even if the administrator is capable and well-intentioned, but in an environment that does not support positive change. The commenter also indicated the rule could make it harder for well-intentioned organizations to turn their program around and hire a new administrator when high-quality administrators are already in short supply. Moreover, the commenter recommended CCR clarify in rule to what extent history will be considered so that persons taking on the role of a board member will fully understand the ramifications of taking that role.

Response: HHSC declines to revise the rule because the general purpose of these rules is to ensure that heightened monitoring is not undermined due to the change of ownership of a residential child-care operation when there is a significant connection between the new and the previous operations. HHSC notes that the definition of "controlling person" in 26 TAC §745.901(a) includes several different roles, including administrators and board members, and that different persons may fill these roles for varying lengths of time through the history of an operation. There are already serious consequences for being a controlling person at an operation when HHSC revokes the operation's permit so that HHSC can ensure that a controlling person at the operation cannot assume a controlling person role at another operation for a period of time. It is equally important for HHSC to be able to consider overlapping controlling persons when determining if there is a significant connection between the previous and new residential child-care operations after a change in ownership.

Comment: Regarding §745.495(b)(1), the commenter strongly recommended striking intakes from the definition of history considered. The commenter indicated the rule penalizes well-meaning providers who err on the side of caution and report incidents that are not required to be reported.

Response: HHSC declines to revise the rule, because CCR must adhere to the federal court orders in *MD v. Abbott.* Remedial Order 20 requires CCR to subject facilities to "heightened monitoring" where they "show a pattern of contract or policy violations." The federal court indicated Remedial Order 20 relates to, and is informed by, the requirements of Remedial Order 22 that inspectors consider a placement's past alleged or confirmed findings of abuse or neglect and confirmed findings of corporal punishments during inspections, and that inspectors must monitor whether placements are reporting suspected child abuse or neglect appropriately.

Comment: Regarding the proposed rules in total, the commenter indicated the rules will generally serve to prevent bad actors from closing a facility to avoid consequences and then set up another one in a different location that similarly underperforms or worse. The commenter also indicated they understand that the rules stem from the interpretation of, and ensuing contempt order to enforce, court orders in *MD v. Abbott.* The commenter noted, however, the state is experiencing what may be an all-time low in capacity, especially for the high-needs population, and the rules may exacerbate the current capacity crisis.

Response: HHSC declines to revise the rules because CCR must adhere to the federal court orders in *MD v. Abbott.* Remedial Order 20 ordered CCR to identify, track, and address minimum standard deficiencies and contract violations and to place operations on heightened monitoring within 120 days. Heightened monitoring includes more frequent inspections, corrective actions, and other remedial actions as appropriate. In addition, in Remedial Order 22, the court ordered that effective immediately, CCR must consider during certain inspections all referrals and confirmed findings of child abuse or neglect and all confirmed findings of corporal punishment occurring in the placements. In the December 18, 2020, Court Order that found CCR to be in contempt for not complying with Remedial Order 22, the court also indicated a concern that the CCR enforcement framework does not take into account the previous five-year compliance history of a new applicant for a license when the applicant has previously been operating as a residential child-care operation in a different location.

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, Texas Human Resources Code (HRC) §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

§745.491. What do the following terms mean when used in this division?

The following terms have the following meanings when used in this division:

(1) Change in ownership--As stated in §745.437 of this chapter (relating to What is a change in ownership of an operation?).

(2) Heightened monitoring--An increase in oversight of a residential child-care operation that has a pattern of deficiencies relating to minimum standard deficiencies weighted medium or higher, confirmed abuse or neglect findings, or Texas Department of Family and Protective Services (DFPS) contract violations. Heightened monitoring is mandated by a court order in the *MD vs. Abbott* litigation dated March 18, 2020.

§745.493. Who does this division apply to?

This division applies to an applicant for a general residential operation or child-placing agency license that demonstrates an intent to obtain a contract with:

(1) the Texas Department of Family and Protective Services (DFPS) to provide care to children in the conservatorship of DFPS; or

(2) a single source continuum contractor that contracts with DFPS to provide community-based care as described in Subchapter B-1, Chapter 264, Texas Family 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 May 24, 2021.

TRD-202102080
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: June 13, 2021
Proposal publication date: February 26, 2021
For further information, please call: (512) 438-3269

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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§749.801, 749.867, 749.869, 749.881, 749.882, 749.883, 749.885, 749.933, 749.935, 749.937, 749.941, 749.943, 749.944, 749.947, 749.949, 749.2447, 749.2449, 749.2470, 749.2473, 749.2489, 749.2495, 749.2497, 749.2520, 749.2961, and 749.3391; new §§749.811, 749.813, 749.833, 749.863, 749.864, 749.868, 749.887, 749.889, 749.911, 749.913, 749.915, 749.930, 749.931, 749.932, 749.939, 749.945, 749.2401, 749.2526, 749.2533, 749.2535, 749.2537, and 749.2539; and the repeal of §§749.833, 749.863, 749.868, 749.901, 749.903, 749.931, 749.939, 749.945, 749.951, 749.981, 749.983, 749.985, 749.987, 749.989, 749.991, and 749.2401 in Title 26, Texas Administrative Code (TAC), Chapter 749, Minimum Standards for Child-Placing Agencies.

The amendment to §749.801 and new §749.930 are adopted with changes to the proposed text as published in the February 26, 2021, issue of the *Texas Register* (46 TexReg 1327). These rules will be republished.

The amendments to §§749.867, 749.869, 749.881, 749.882, 749.883, 749.885, 749.933, 749.935, 749.937, 749.941, 749.943, 749.944, 749.947, 749.949, 749.2447, 749.2449, 749.2470, 749.2473, 749.2489, 749.2495, 749.2497, 749.2520, 749.2961, and 749.3391; new §§749.811, 749.813, 749.833, 749.863, 749.864, 749.868, 749.887, 749.889, 749.911, 749.913, 749.915, 749.931, 749.932, 749.939, 749.945, 749.2401, 749.2526, 749.2533, 749.2535, 749.2537, and 749.2539; and the repeal of §§749.833, 749.863, 749.868, 749.901, 749.903, 749.931, 749.939, 749.945, 749.951, 749.981, 749.983, 749.985, 749.987, 749.989, 749.991, and 749.2401 are adopted without changes to the proposed text, as published in the February 26, 2021, issue of the *Texas Register* (46 TexReg 1327). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

Certain bills from the 86th Legislature, Regular Session, 2019, amended Chapter 162 of Texas Family Code and Chapter 42 of Texas Human Resources Code (HRC). The purpose of the new, amended, and repealed rules is to implement those amendments as they apply to 26 TAC Chapter 749.

Senate Bill 195 amended Texas Family Code §162.007(a) to require HHSC Child Care Regulation (CCR) to update the health history requirements in the Health, Social, Educational, and Genetic History adoptive report, to include a child's diagnosis of fetal alcohol spectrum disorder when the Department of Family and Protective Services (DFPS) has this information.

House Bill (H.B.) 2363 amended HRC §42.042(e-1) to require CCR to update the minimum standards to allow a foster home to store a firearm and ammunition together in the same locked location if the firearms have a trigger locking device.

H.B. 2764 amended §42.042 by adding subsection (t) to require CCR to develop minimum standards to grant child-placing agencies (CPAs) the authority to waive certain pre-service and annual training requirements for a foster home in certain situations.

H.B. 2764 also amended HRC §42.042 by adding subsection (b-1) to require CCR to simplify, streamline, and provide greater flexibility in the application of the minimum standards to child-placing agencies, foster homes, and adoptive homes. In response to this legislation, the many proposed changes (1) reorganize the Divisions for consistency and clarity; (2) update many issues relating to pre-service and annual training, including (A) clarifying which trainings may be "self-instructional" or must be instructor-led; (B) simplifying the pre-service and annual training standards by separating the standards for caregivers and employees and incorporating more charts; (C) increasing the training hours that may be carried over to the next year; and (D) adding topics that are appropriate for annual training; (3) update the pediatric first aid and pediatric CPR requirements; and (4) allow a CPA to (A) verify a separated spouse as a foster home in certain situations; (B) omit an interview with an adult child during a foster home screening if the CPA documents unsuccessful diligent efforts to locate the adult child; and (C) provisionally verify a foster home that is transferring from one CPA to another and will continue care for a foster child already in the home.

COMMENTS

The 31-day comment period ended March 29, 2021. During this period, HHSC received four comments regarding the proposed rules from two commenters: Therapeutic Family Life and Texas Alliance of Child and Family Services. A summary of comments relating to the rule and HHSC's responses follow.

Comment: Regarding §749.801, the commenter recommended aligning the definition of a single source continuum contractor (SSCC) with Subchapter B-1 of Chapter 264, Texas Family Code. The commenter also stated that the SSCC is not compelled to be a CPA and the definition focuses on supervising child-placing activities when the SSCC also oversees a network of providers.

Response: HHSC agrees in part and disagrees in part with the commenter. HHSC will amend the definition of an SSCC to ensure that it is consistent with the requirements of Texas Family Code. However, HHSC will retain the CPA designation in the definition, because Chapter 749 applies specifically to CPAs.

Comment: Regarding §749.930, the commenter wanted the rule clarified that a caregiver who cares exclusively for children receiving treatment services for primary medical needs is still exempt from four hours of annual training for emergency behavior intervention.

Response: HHSC agrees with the commenter. The intent was to simplify and streamline the rule, not to change its content. The rule has been clarified accordingly.

Comment: Regarding the new rules relating to a provisional verification (§§749.2526, 749.2533, 749.2535, 749.2537, and 749.2539), the commenter stated the provisional verification

rules do not effectuate HRC 42.0537(f) from H.B. 2764, 86th Legislature, Regular Session, 2019. According to the commenter, through legislative intent, HRC §42.0537(f) required the provisional verification of prospective foster homes, including kinship homes (a caregiver that is related to a child or has a longstanding relationship with a child who is taken into the conservatorship of the state). The commenter also expressed that the need for upfront verification is an important tool for capacity and support of the family. Finally, the commenter pointed to a United States Department of Health and Human Services, Administration for Children and Families (ACF) Information Memorandum (IM 20-08) in support of upfront verification of foster homes.

Response: The comment is outside the scope of the rule proposal and HHSC declines to revise the rules. The proposal preamble states that the provisional verification rules, while they do respond to H.B. 2764, are in specific response to HRC §42.042(b-1) to provide greater flexibility in the application of the minimum standards to CPAs and foster homes. Regarding HRC §42.0537(f) and issuing a provision verification for a foster caregiver that completes training under HRC §42.0537(d), the additional competency-based, pre-service training, and other required training in this section are trainings that are required by DFPS. These trainings are not required by CCR. There is no need to request a waiver from these trainings or a provisional verification, and any home, including a kinship home, could be verified as a foster family home for basic care before completing these additional trainings. Regarding the upfront verification of kinship homes as foster family homes, CCR can work with DFPS and other interested parties to determine if there are ways to shorten the verification process for kinship homes or provide more flexibility. This would require a workgroup to determine which options are viable in relation to costs and processes. Some options mentioned in the ACF Information Memorandum include a temporary verification process, provisional verification process, or template for waiving non-safety standards. In addition, the workgroup would need to consider how any change to the verification process for kinship homes would impact the state's receipt of federal funds, especially considering any increase in costs to the state would have to be noted as a fiscal impact to the state for any proposed rule change.

Comment: There was a general comment that the rule changes provide helpful flexibility and clarification.

Response: HHSC appreciates the comment.

SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

DIVISION 1. DEFINITIONS

26 TAC §749.801

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The amendment is adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

§749.801. What do certain words and terms mean in this subchapter?

The words and terms used in this subchapter have the following meanings:

(1) CPR--Cardiopulmonary resuscitation.

(2) Hours--Clock hours.

(3) Instructor-led training--Training that is characterized by the communication and interaction that takes place between the student and the instructor. Instructor-led training does not have to be in person, but it must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must be able to answer questions, provide feedback on skills practice, provide guidance or information on additional resources, and proactively interact with students. Examples of this type of training include classroom training, online distance learning, blended learning, video-conferencing, or other group learning experiences.

(4) Normalcy--See §749.2601 of this chapter (relating to What is "normalcy"?).

(5) Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(6) Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours, see §749.935(d) of this subchapter (relating to What types of hours or instruction can be used to complete the annual training requirements?).

(7) Single source continuum contractor--A child-placing agency that contracts with the Department of Family and Protective Services to provide community-based care as described in Subchapter B-1, Chapter 264, Texas Family 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 May 24, 2021.

TRD-202102060
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: June 27, 2021
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For further information, please call: (512) 438-3269

DIVISION 2. OVERVIEW OF TRAINING AND EXPERIENCE REQUIREMENTS

26 TAC §749.811, §749.813

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The new sections are adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202102061
Karen Ray
Chief Counsel
Health and Human Services Commission
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Proposal publication date: February 26, 2021
For further information, please call: (512) 438-3269

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26 TAC §749.833

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The repeal is adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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Proposal publication date: February 26, 2021
For further information, please call: (512) 438-3269

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DIVISION 3. ORIENTATION

26 TAC §749.833

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The new section is adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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Proposal publication date: February 26, 2021
For further information, please call: (512) 438-3269

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26 TAC §749.863, §749.868

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The repeals are adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

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 May 24, 2021.

TRD-202102064
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: June 27, 2021
Proposal publication date: February 26, 2021
For further information, please call: (512) 438-3269

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DIVISION 4. PRE-SERVICE EXPERIENCE AND TRAINING

26 TAC §§749.863, 749.864, 749.867 - 749.869

STATUTORY AUTHORITY

The new sections and amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The new sections and amendments are adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202102065

Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3269

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DIVISION 5. CURRICULUM COMPONENTS FOR PRE-SERVICE TRAINING

26 TAC §§749.881 - 749.883, 749.885, 749.887, 749.889

STATUTORY AUTHORITY

The new sections and amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The new sections and amendments are adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
Chief Counsel
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For further information, please call: (512) 438-3269

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26 TAC §749.901, §749.903

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The repeals are adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 6. PEDIATRIC FIRST AID AND PEDIATRIC CPR CERTIFICATION

26 TAC §§749.911, 749.913, 749.915

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The new sections are adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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26 TAC §§749.931, 749.939, 749.945, 749.951

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The repeals are adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 7. ANNUAL TRAINING

26 TAC §§749.930 - 749.933, 749.935, 749.937, 749.939

STATUTORY AUTHORITY

The new sections and amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The sections and amendments are adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

§749.930. What are the annual training requirements for a caregiver?

(a) A caregiver must complete the number of annual training hours described in the following chart:
Figure: 26 TAC §749.930(a)

(b) For a home with two foster parents, the foster parents may combine their individual training hours to meet the total number of required annual training hours. If each foster parent is required to complete 10 hours, they must collectively complete 20 hours. If each foster parent is required to complete 25 hours, they must collectively complete 50 hours. But the foster parents do not have to split the total number of required hours equally, if:

(1) Each foster parent completes each of the required annual training hours noted in subsection (c) of this section; and

(2) They complete the combined total number of required hours for annual training.

(c) For the annual training hours described in subsection (a) of this section, each caregiver must complete the following specific types of training and hours:
Figure: 26 TAC §749.930(c)

(d) To meet the mandated annual training requirements in subsection (c) of this section, the training must comply with the applicable curriculum requirements in Division 8 of this subchapter (relating to Topics and Curriculum Components for Annual Training).

(e) After completing the type of annual training required in subsection (c) of this section, any remaining number of annual training hours must be in areas appropriate to the needs of children for whom the caregiver provides care, as required by §749.941 of this subchapter (relating to What areas or topics are appropriate for annual training?).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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26 TAC §§749.981, 749.983, 749.985, 749.987, 749.989, 749.991

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The repeals are adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 8. TOPICS AND CURRICULUM COMPONENTS FOR ANNUAL TRAINING

26 TAC §§749.941, 749.943 - 749.945, 749.947, 749.949

STATUTORY AUTHORITY

The new sections and amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The new sections and amendments are adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS

DIVISION 1. GENERAL REQUIREMENTS

26 TAC §749.2401

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition,

HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The repeal is adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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26 TAC §749.2401

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The new section is adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 2. FOSTER HOME SCREENINGS

26 TAC §749.2447, §749.2449

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The amendments are adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 3. VERIFICATION OF FOSTER HOME

26 TAC §§749.2470, 749.2473, 749.2489, 749.2495, 749.2497

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The amendments are adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

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DIVISION 4. TEMPORARY AND TIME-LIMITED VERIFICATIONS

26 TAC §§749.2520, 749.2526, 749.2533, 749.2535, 749.2537, 749.2539

STATUTORY AUTHORITY

The new sections and amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The new sections and amendments are adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER O. FOSTER HOMES: HEALTH AND SAFETY REQUIREMENTS, ENVIRONMENT, SPACE AND EQUIPMENT
DIVISION 3. WEAPONS, FIREARMS, EXPLOSIVE MATERIALS, AND PROJECTILES

26 TAC §749.2961

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The amendment is adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

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Karen Ray
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DIVISION 5. REQUIRED INFORMATION

26 TAC §749.3391

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, HRC §42.042 requires the Executive Commissioner to adopt rules to carry out the requirements in HRC Chapter 42.

The amendment is adopted to be consistent with Texas Family Code §162.007 and HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES
SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §21.2821

The Commissioner of Insurance adopts amendments to 28 TAC §21.2821, concerning reporting requirements, and withdraws the repeal of §21.2824, concerning applicability. The Texas Department of Insurance (TDI) adopts §21.2821 with changes to the proposed text published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8483). The rule will be republished.

REASONED JUSTIFICATION. Under Insurance Code §843.342 and §1301.137, managed care carriers (MCCs) are required to pay a penalty and applicable interest for the late payment of clean claims. The adopted amendments to §21.2821 expand the data reporting requirements under the prompt pay reporting system so that TDI can adequately determine compliance, lower the frequency of some reporting to reduce the regulatory burden on MCCs, and provide a new mechanism for the electronic reporting of data to improve efficiency and limit the possibility of data entry errors.

While the current rule requires quarterly reporting of data, it does not address reporting of penalty and interest payments for late-paid clean claims. In practice, MCCs have been reporting penalty and interest data monthly since the dissolution of the Texas Health Insurance Pool and transfer of its obligations and authority to TDI. With these adopted rule amendments, monthly reporting will no longer be necessary; MCCs will begin reporting the data quarterly. TDI expects that the reduction in frequency of reporting along with the changes and clarifications made in response to comment on the proposed rule will reduce the carriers' burden of compliance over time.

In order to verify that the amount paid is correct, the amended rule requires that the quarterly report from MCCs required under §21.2821(a) include the total number of reported late-paid claims and the aggregate dollar value corresponding to those claims. This dollar value will be submitted for each time frame (i.e., claims paid late between 1 and 45 days, claims paid late between 46 and 90 days, and claims paid late 91 days or greater). The amended rule also requires the carrier to report the dollar amount paid late on each clean claim, for each applicable time frame. In response to comment, TDI has removed language from the rule requiring carriers to report claim numbers to TDI. It also requires the carrier to report the associated penalty dollar amount it paid to the preferred provider. Additionally, it requires

an MCC to report the amount of interest, based on the penalty dollar amount, that the MCC paid to TDI for each clean claim that the MCC paid to a noninstitutional preferred provider on or after the 91st day after the end of the applicable statutory claims payment period. The purpose of this reporting is to enable TDI to verify the amounts and tie the penalty and interest payments to actual claims paid.

TDI has made a change in response to comments to require claim-level data to be reported using a unique identifier for each claim that is not the claim number. HIPAA privacy rules provide a mechanism for covered entities to de-identify and re-identify protected health information (PHI), similar to the unique identifier concept used in the rule. The amended rule provides that this unique identifier will be generated and maintained solely by the MCC and will consist of no more than 15 characters. The amended rule provides further that the unique identifier may not contain any of the identifiers listed in 45 C.F.R. §164.514(b)(2), concerning requirements for de-identification of PHI. Additionally, the amended rule requires the MCC to relate the unique identifier back to the claim on request by TDI during an examination. To the extent that MCCs already have processes in place to create a unique code to identify claims in connection with de-identification of confidential information, TDI anticipates that the MCC could use the same process to create and maintain the unique identifier required by the rule. The amended rule also requires that carriers report the number of written complaints received regarding failure to pay a clean claim on time. This report gathers the number of such complaints received by an MCC, including those that may not have been submitted to TDI as formal complaints. Complaint numbers can be an indication of the quality of a carrier's claims payment processes. In response to comment, the rule has been revised to require the submission of the total number of written complaints (and not oral complaints) for failure to pay a clean claim on time.

The first report including the data submissions required by the new rule will be due to TDI by May 15, 2022, for data from the months of January, February, and March of that year. Subsequent reports must meet the submission deadlines set forth in §21.2821(b). This change in the initial submission date was made in response to commenters' concerns about the additional time carriers will need to gather and submit all the required information.

In response to comment, TDI is developing a process by which MCCs will upload a file with the claim-level data rather than entering it manually into the portal. Technical instructions, to be developed with input from stakeholders, will be available later. TDI expects that this will allow MCCs to automate reporting of claim-level data. TDI expects that this file will be available for use by MCCs well in advance of the first reporting deadline in May of 2022, and TDI will monitor the implementation and make adjustments as appropriate. The rest of the data will be entered through the portal directly into TDI's new electronic prompt pay reporting database. Electronic submission will reduce the possibility of data entry errors, enhance TDI's oversight capabilities, and increase efficiency.

The revised rule requires MCCs to report the dollar value of late-paid clean claims (using a unique identifier as described in the rule), the associated penalty dollar amount, and interest as applicable. Without this information the only verification of compliance that TDI can perform is to spot-check claims and claims payments via market-conduct and quality-of-care examinations. The new requirements allow TDI to determine compliance with Insurance Code §843.342 and §1301.137.

TDI withdraws the repeal of §21.2824 in response to commenters' concerns that deletion of the provision would eliminate a provision that is useful in determining the scope of the prompt pay law.

Section 21.2821. Reporting Requirements. Amendments to this section require the reporting of additional data elements relating to the late payment of clean claims.

An amendment to subsection (a) revises the subsection to specify that, in addition to submitting quarterly claims payment information, an MCC must submit related penalty and interest payment information and information regarding complaints.

Amendments to the section also add new subsection (e), which lists and describes the information that an MCC must provide in the report required by subsection (a) of the section to satisfy the expanded data reporting requirements. The information required by the new subsection includes the following:

- the total dollar amount of clean claims the MCC paid after the end of the applicable statutory claims payment period, broken down by relevant time period;

- the dollar amount of each clean claim the MCC paid late to noninstitutional preferred providers, broken down by relevant time period;

- the dollar amount of each clean claim the MCC paid late to institutional preferred providers, broken down by relevant time period;

- the amount of interest, based on the penalty dollar amount, that the MCC paid to TDI for each clean claim that the MCC paid to a noninstitutional preferred provider on or after the 91st day after the end of the applicable statutory claims payment period;

- for each clean claim that the MCC paid late, the associated penalty dollar amount; and

- the total number of written complaints received by an MCC for failure to pay a clean claim on time.

The text of §21.2821(e)(2) and (3) as proposed has been changed by deleting the term "penalty," and inserting the term "late" in each paragraph. The purpose of the change is to clarify that (1) the subsection requires the reporting of the dollar amount of late-paid clean claims paid to institutional preferred providers--not the reporting of penalties associated with those dollar amounts--and (2) the reporting of dollar amounts refers to late-paid clean claims. A separate subsection addresses reporting of penalties.

The text of §21.2821(e)(3) as proposed has been changed by replacing the term "noninstitutional provider" with "noninstitutional preferred provider" to be consistent with the other provisions of §21.2821.

The text of §21.2821(e)(4) as proposed has been changed by replacing the phrase "the noninstitutional preferred provider" with "a noninstitutional preferred provider."

The text of §21.2821(e)(6) as proposed has not been adopted because it is duplicative language. The subsequent subsection has been redesignated accordingly.

In response to comment, the text of proposed §21.2821(e)(7) (which is adopted as subsection (e)(6)) has been changed by replacing the term "complaints" with "written complaints" to clar-

ify that MCCs are required to report to TDI only the total number of written complaints received by the MCC for failure to pay a clean claim on time.

In response to comment regarding the confidentiality of claim numbers, the text of §21.2821 as proposed has been changed to require the reporting of claims using unique identifiers instead of reporting by claim numbers. The amendments to the section add new subsection (f), which describes the creation and maintenance of the unique identifiers by MCCs and access to the underlying claims by TDI. As a result of adding this new subsection, the subsections after it are redesignated accordingly.

Subsection (g), which was proposed as subsection (f), requires that the quarterly report required by subsection (a) be submitted electronically as specified on TDI's website.

Finally, the text of subsection (h), which was proposed as subsection (g), was changed to include the new subsection (f) added with this adoption and to revise the reporting date. As adopted, subsection (h) provides that the new reporting requirements in subsections (e), (f), and (g) apply to reports submitted under subsection (a), beginning with the report required to be submitted by May 15, 2022, for data for the months of January, February, and March of that year.

Section 21.2824. Applicability. In response to comments, TDI withdraws the repeal of §21.2824. Several commenters indicated that the applicability provision was useful to them, as it provided clarity in assessing the application of the prompt pay law.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received written comments and comments at a public hearing held on February 2, 2021. Commenters against the proposed amendments to §21.2821 were Superior HealthPlan and Texas Association of Health Plans. Commenters against the proposed repeal of §21.2824 were PPO Check and Texas Hospital Association.

Comments on §21.2821

Comment. A commenter requests that TDI explain how it intends to utilize the reporting requirements to adequately determine compliance, including in comparison to its current practice.

Agency Response. Currently, TDI is unable to determine whether the dollar values of late-paid clean claims, penalties, and applicable interest comply with statutory requirements, except through random sampling in an examination. Investigation through random sampling in an exam does not necessarily reveal the existence or potential scope of noncompliance. By requiring MCCs to report claim-level information, including the dollar values of claims, late-payment penalties, and applicable interest, TDI can verify those dollar values. Reporting of these dollar values will assist TDI in an exam and ensure that TDI has the information needed to evaluate compliance with Insurance Code §843.342 and §1301.137.

Comment. A commenter requests that the rule be revised to clarify that the proposed quarterly reporting is in lieu of the current monthly reporting and payment of penalties to TDI.

Agency Response. TDI declines to make a change to the rule text but provides the requested clarification. The current monthly reporting process is a result of legislation passed by the Texas Legislature in 2013 (Senate Bill 1367), which dissolved the Texas Health Insurance Pool and transferred the pool's administrative and financial responsibilities to TDI. With the adoption of this rule, MCCs will now complete the payment and related reporting as set forth in the rule quarterly in lieu of the current monthly payment and reporting process. MCCs that wish to continue paying monthly may do so; full payment for the quarter is due by the reporting due date set out in §21.2821(b).

Comment. A commenter requests that TDI confirm that (1) its share of penalty or interest payments will be paid quarterly rather than monthly, in accordance with the proposed quarterly reporting schedule; (2) any interest stops accruing when the provider's portion of the penalty and interest is paid to the provider; and (3) payments to TDI may be made either by wire or by check. The commenter also asks whether the penalty and interest payment will be due quarterly with the rule change.

Agency Response. TDI's share of penalty or interest payments will be due quarterly as set out in §21.2821. As mentioned previously, full payment for a quarter is due by the reporting due date, but MCCs have the option to continue paying monthly if they would like to. Interest stops accruing when the provider's portion of the penalty and interest is paid in full. TDI is in the process of updating its electronic services, including online payments; until this update is completed, payments will continue to be made to TDI by wire or by check.

Comment. A commenter disputes TDI's determination that, while this proposal may impose an initial cost, these initial costs will be more than offset by savings that result from a reduction in reporting frequency. The commenter notes that changing from monthly to quarterly reporting will not offset the costs created by the extensive increase in the amount of data required by the proposal. The commenter notes that the proposal requires unnecessary data and actually increases carriers' burdens with no corresponding benefits to consumers, and requests clarification regarding how the proposal will reduce the regulatory burden on carriers with the introduction of extensive additional data requirements.

Agency Response. TDI has made clarifications in this adoption order intended to address concerns about undue burden on carriers. TDI anticipates that allowing carriers to submit claim-level information using a file rather than manually entering data into the portal will allow carriers to automate the reporting of the data. While this will involve an initial programming cost, moving the reporting from monthly to quarterly should reduce the burden on MCCs over time. TDI expects that carriers will not be required to create new data to report; rather, carriers will report data that they already are collecting. The rule provides a public benefit by promoting the timely and correct payment of clean claims. By requiring carriers to report the dollar values of claims, late-payment penalties, and applicable interest, TDI can verify those dollar values. Reporting of dollar values will assist TDI in meeting its oversight responsibilities and ensure compliance with Insurance Code §843.342 and §1301.137.

Comment on §21.2821(b) and (g)

Comment. A commenter requests that TDI extend the due dates for reporting by an additional month after the close of the reporting period, as carriers will need more time to gather and submit all of the information included in the proposal. The commenter noted that the current turnaround time of about six weeks is tight for carriers; carriers will need more time to gather and submit the additional information included in the proposal. The commenter also requests that TDI provide a start date for reporting time periods that is later than January 1st, to address carriers' programming needs.

Agency Response. TDI declines to make a rule change extending the due dates for quarterly reporting by an additional month. It is important for TDI to collect data as soon as possible to meet its oversight responsibilities. As MCCs already collect the data being requested under subsection (e), TDI anticipates that adding an additional month to submit the quarterly report would be unnecessary. However, TDI is extending implementation of the new reporting requirements by one year in light of the clarifications being made in response to comments about manual entry and to allow carriers time to address programming needs. Section 21.2821(h) has been revised to provide that the new reporting provisions apply to reports submitted under subsection (a), beginning with the report required to be submitted May 15, 2022, for the months of January, February, and March of that year. Subsequent reports must meet the submission deadlines set forth in §21.2821(b). Further, TDI will monitor implementation of the technical instructions as it relates to the first required reporting period and make adjustments as appropriate.

Comment on §21.2821(e)(1) - (e)(3)

Comment. A commenter notes that the term "total dollar amount" is undefined in the rule. The commenter asks whether the term refers to the amount billed, allowed, or paid. The commenter also requests that TDI explain how this information is useful to TDI. Additionally, the commenter requests that TDI clarify that this information is to be reported in the aggregate and not for each claim. If the term refers to allowed or paid amounts for particular claims, then the commenter objects because allowed or paid amounts for particular claims will reveal proprietary and confidential negotiated network rates.

The commenter also objects to the reporting or disclosure of penalty dollar amounts that an MCC paid to a preferred provider for late-paid clean claims if the reporting requires matching the penalty amount to the claim amount. The commenter objects because the disclosure will reveal or allow calculation by reverse engineering of proprietary and confidential negotiated network rates.

The commenter also notes that the requirement for claim-by-claim reporting does not address issues regarding "pay and pursue" subrogation practice, or unclean claims paid timely. In addition, the commenter notes that claim-by-claim reporting raises questions regarding whether to adjust previously filed reports when there have been subsequent adjustments to the previously filed reports. The commenter also notes that reporting of such adjustments would greatly increase the administrative difficulty of reporting.

Agency Response. The term "total dollar amount" refers to the dollar amount of all clean claims paid after the end of the applicable statutory claims payment period, broken down by the time periods described in subsection (e)(1). The purpose of this data collection is to allow TDI to determine patterns in late payment of clean claims that warrant further investigation.

In response to the commenter's request to clarify that the total dollar amount to be reported is in the aggregate and not for each claim, TDI notes that §21.2821(e)(1) requires the reporting of certain total dollar amounts, whereas §21.2821(e)(2) - (e)(5) require the reporting of claim-specific amounts relating to claims, penalties, and interest. TDI has made changes to the rule text in subsection (e)(2) and (3) to make this clearer. Reporting of this data will allow TDI to verify penalty and interest amounts and conduct targeted inquiries rather than random sampling. Using reported data will allow TDI to ensure compliance while making more efficient use of agency resources.

TDI takes seriously commenter concerns about the confidentiality of the collected information and about the potential reverse engineering of proprietary negotiated network rates. TDI notes that the rule does not collect information relating the claim to a particular medical service or provider.

Further, TDI will maintain confidentiality of the collected information as provided by law. TDI notes when items are marked confidential or proprietary, or when information may be protected from disclosure in referring requests. Information marked proprietary by carriers may be referred to the Office of the Attorney General for a determination under the Public Information Act, and the carrier notified to provide an opportunity for the carrier to make arguments against the release of the information.

Regarding the issue of "pay and pursue" subrogation practice, or unclean claims paid timely, TDI notes that the rule addresses clean claims paid late, not the circumstances surrounding the claim. Regarding the comment concerning adjustment of previously filed reports, TDI notes that requests to adjust previously filed reports under the current reporting requirements are infrequent. In rare cases, TDI has worked with an MCC to make a correction to a previously filed report. Such requests are considered on a case-by-case basis and should be uncommon.

Comment on §21.2821(e)(2) - (e)(6)

Comment. A commenter requests that TDI clarify how the MCC will report several items if it must enter the data for each unique claim versus uploading an Excel spreadsheet.

Agency Response. As addressed elsewhere in this adoption order, TDI will develop a process by which MCCs can upload a file with claim-level data rather than entering the data manually for each unique claim. TDI notes that subsection (e)(6) has been deleted as duplicative.

Comment on §21.2821(e)(4)

Comment. A commenter notes that, given the timing of the reporting and the time period for MCCs' payments of interest to TDI, a claim could be included on a report for a calendar year, but the interest not yet paid to TDI. The commenter requests that TDI clarify how interest payments are to be paid across reporting periods. The commenter also requests that TDI consider allowing MCCs to report the provider and TDI shares of penalties and interest assessed, with the caveat that the portion payable to TDI reflected in the report may be paid either within that quarter or the following quarter.

Agency Response. In most cases, the claims payment and penalty payment are made in the same reporting period. The reporting of a late-payment penalty in one reporting period and the payment of interest thereon in a subsequent reporting period occasionally happens under the current rule. These rule amendments do not make changes that address this situation, and TDI anticipates that this may infrequently happen under the new adopted rule.

Comments on §21.2821(e)(5)

Comment. A commenter recommends that, because claim numbers are PHI, TDI should consider and ensure that it is requiring the minimum necessary to accomplish its intended purpose. The commenter also recommends that TDI should explain how it is accomplishing this with the proposal. In addition, the commenter recommends that TDI should describe the purpose in requiring

every Texas MCC to submit claim-level information on a routine basis, when it is likely subject to an open records request and would require costly challenges to disclosure.

Agency Response. The purpose of the disclosure is to promote the integrity of the health care claim reimbursement system. By requiring MCCs to report claim-level information--including the dollar values of claims, late-payment penalties, and applicable interest--TDI can verify those dollar values. Reporting of these dollar values will assist TDI in an exam and is essential to ensuring that TDI has the information needed to evaluate compliance with Insurance Code §843.342 and §1301.137.

TDI is sensitive to the commenter's concerns about confidential claim numbers. In response to this comment, TDI has added language to the rule to safeguard the privacy of claim numbers. The amended rule requires the carrier to submit claim-level data identified by a unique identifier and not by claim number. HIPAA privacy rules provide a mechanism for covered entities to de-identify and re-identify PHI, similar to the unique identifier concept used in the rule. The amended rule provides that this unique identifier will be generated and maintained solely by the MCC and will consist of no more than 10 characters. The amended rule provides further that the unique identifier may not contain any of the identifiers listed in 45 C.F.R. §164.514(b)(2), concerning requirements for de-identification of PHI. Additionally, the amended rule requires the MCC to relate the unique identifier back to the claim on request by TDI during an examination. To the extent that MCCs already have processes in place to create a unique code to identify claims in connection with de-identification of confidential information, TDI anticipates that the MCC could use the same process to create and maintain the unique identifier required by the rule.

In response to the commenter's statement that claim-level information submitted to TDI on a routine basis likely would be subject to an open records request, TDI notes that MCCs with concerns about the confidentiality of their submissions have the option to designate information submitted to TDI as "proprietary." TDI has controls in place to reduce the risk of unauthorized exposure of information when responding to an open records request. In response to the commenter's statement that claim-level information submitted to TDI on a routine basis would require costly challenges to disclosure, TDI notes that the Office of the Attorney General has procedures in place to direct a governmental body's response to an open records request for material that may have been the subject of a previous determination by the Attorney General. While what constitutes a "previous determination" may be narrow in scope, the reliance on previous determinations may help reduce the frequency and the cost of responding to a challenge to disclosure.

Comment. A commenter notes that the current method of filing TDI Form FIN593 on a monthly basis allows MCCs the opportunity to offset overpayment refunds by reducing the monthly payment to the state. The commenter requests clarification regarding how MCCs should account for such offsets in the reporting process.

Agency Response. TDI declines to make a change to the adopted rule. There is no offset provision in TDI Form FIN593 or in TDI rule. This rule does not address offsets or recoupments, which are separate issues.

Comments on §21.2821(e)(7) (redesignated as (e)(6) in the adoption)

Comment. A commenter objects to the complaint reporting provision as administratively burdensome and unnecessary because TDI tracks formal complaints that it receives and regularly reviews carriers' complaint records as part of the exam process.

Agency Response. TDI declines to remove the complaint reporting provision from the rule. As required by Insurance Code §843.260, an HMO is required to maintain a complaint and appeal log regarding each complaint. Insurers are required under 28 TAC §21.2503 to maintain a complete record of all complaints. Under 28 TAC §21.2504(c)(3)(A) and (B), this record includes information regarding claims procedures and delays. In addition, Insurance Code §542.005 requires insurers to maintain a complete record of complaints, including an indication of the nature of each complaint. Section 542.005 defines "complaint" as "any written complaint primarily expressing a grievance." The rule does not require that MCCs collect complaint information that they are not already required to collect. The number of complaints about failure to pay a clean claim on time can be an indication of problems with an MCCs claims payment processes. Reporting of this data will allow TDI to conduct targeted inquiries to assess these processes.

Comment. A commenter requests that, if TDI does include a requirement for the reporting of complaints, TDI confirm that "complaint" as applied to HMO plans means a communication from a provider only when the provider is designated to act on behalf of an HMO enrollee; "complaint" should not include an inquiry that can be easily resolved. The commenter also requests that TDI confirm that the term "complaint" does not include an HMO provider's request or demand for payment of a late or allegedly underpaid claim or prompt pay penalties for purposes of the proposed rule.

Agency Response. In response to comment, TDI makes a change to §21.2821(e)(6) by adding "written" to the paragraph. TDI notes that the rule does not establish a definition of "complaint" for HMOs that differs from what is already in statute. The Texas Health Maintenance Organization Act, Insurance Code Chapter 843, addresses complaints for HMOs.

Section 843.002(5) defines a "complainant" as "an enrollee, or a physician, provider, or other person designated to act on behalf of an enrollee, who files a complaint." The act defines "complaint" in §843.002(6), as "any dissatisfaction expressed orally or in writing by a complainant to a health maintenance organization regarding any aspect of the health maintenance organization's operation." That definition excludes "a misunderstanding or a problem of misinformation that is resolved promptly by clearing up the misunderstanding or supplying the appropriate information to the satisfaction of the enrollee."

While the HMO Act defines "complaint" to include both oral and written complaints, TDI recognizes that the majority of complaints regarding failure to pay a clean claim on time are submitted to HMOs by providers in writing and not orally; in recognition of this reality, TDI will require carriers to report only written complaints for failure to pay a clean claim on time. TDI has revised the rule to reflect this change.

Additionally, regarding the underpayment issue, TDI notes that a provider may submit a complaint about failure to pay a claim in full within the statutory claims payment period. Written complaints to carriers about underpayments of clean claims, penalties, and applicable interest should be counted and reported.

Comment. A commenter requests that TDI confirm that, for insurers that issue a preferred and exclusive provider benefit plan,

as defined by Insurance Code §542.002, "complaint" as used in the proposal means "any written communication primarily expressing a grievance" and "not a misunderstanding or a problem of misinformation that is resolved promptly by clearing up the misunderstanding and/or supplying the appropriate information. . . ." as provided in 28 TAC §21.2502.

Agency Response. TDI notes that the rule does not establish a definition of "complaint" for preferred or exclusive provider benefit plans that differs from established rules regarding complaints. Insurers that issue a preferred or exclusive provider benefit plan are required to maintain a complete record of all complaints they receive, as required under 28 TAC §21.2503. "Complaint," as the term is used with regard to insurers (including insurers that issue a preferred or exclusive provider benefit plan) and as provided in 28 TAC §21.2502(2), means "any written communication to an insurer, not solicited by such insurer, concerning coverage offered or issued by such insurer in this state and primarily expressing a grievance." It excludes from the definition of complaint "a misunderstanding or a problem of misinformation that is resolved promptly by clearing up the misunderstanding and/or supplying the appropriate information to the satisfaction of the person submitting the written communication, as applicable." The rule includes insurers that issue a preferred or exclusive provider benefit plan in the scope of its reporting requirements. They are required to report to TDI the total number of those written complaints that relate to failure to pay a clean claim on time.

Comment. A commenter recommends that the reporting of complaints be limited to only written complaints specific to the issue of prompt payment, as opposed to inquiries as to the status of a claim or complaints regarding coverage of a particular service.

Agency Response. As to the category of reportable complaint types, the complaint reporting requirement applies only to those complaints based on failure to pay a clean claim on time. The subject rule does not change the definitions of "complaint" in statute and rule with regard to HMOs or preferred or exclusive provider benefit plans. With the change noted previously, it does narrow the universe of those complaints for reporting purposes under §21.2821(e)(6) to only the total number of written complaints for failure to pay a clean claim on time.

Comment. One commenter notes that some carriers do not currently capture informal complaints/inquiries that may be received from all areas of the company (such as customer services, provider network, appeals, etc.). The commenter also notes that it would be burdensome and costly to build such a tracking system. The commenter notes that reporting complaints received in the first quarter of 2021 could be problematic if the requirement is broader than a carrier's current internal complaint tracking, as not all carriers currently track complaints in this manner. The commenter recommends that complaints be stricken from the reporting requirements. Alternatively, the commenter recommends that TDI delay complaint reporting requirements until carriers have time to develop and implement tracking systems specific to TDI's interpretation of requirements.

Agency Response. TDI declines to remove complaint reporting provisions from the rule. As noted previously, the rule does not require carriers to build a complaint tracking system or track different complaints in ways other than what is already required in statute and rule. MCCs are required under existing laws to maintain a record of each complaint they receive. This rule does not change that requirement. Existing exclusions from the definition of "complaint," as set forth in the Health Maintenance Act and the exclusive and preferred provider benefit plan rules, will apply to complaint reporting by HMOs and insurers that issue a preferred or exclusive provider benefit plan in this rule. As the rule does not require a carrier to report a list of each complaint, but instead requires the reporting only of the total number of written complaints received by the carrier for failure to pay a clean claim on time, TDI believes that the burden on carriers to report such complaints will be minimal.

With regard to the commenter's request to delay the complaint reporting requirement, TDI is delaying the applicability of the new rule's required reporting (which includes complaint reporting) as noted elsewhere in this adoption order.

Comment on §21.2821(g)

Comment. A commenter recommends that TDI clarify how the process of electronically submitting a quarterly report will work. The commenter also recommends that TDI develop a template with detailed instructions that does not require manual input of each claim and penalty/interest amount, as manual entry would inevitably lead to data entry errors. The commenter states that a standard template that does not require manual input of information for each claim would be helpful to carriers and would increase accuracy and uniformity. Alternatively, the commenter recommends that TDI revise the reporting template (currently TDI Form FIN593) and publish it for public comment. The commenter also recommends that carriers be allowed a secure method to upload their internal reports into TDI's reporting system so that manual input is not required. The commenter suggests that TDI consider allowing an Excel spreadsheet or Adobe PDF report that can be uploaded using a comma-separated values (CSV) file template. Also, the commenter recommends that the process should be flexible enough to accommodate different carriers' systems.

Agency Response. TDI thanks the commenter for its comments regarding data input. As previously stated, TDI is developing a process by which MCCs will upload a file with the claim-level data. This process will allow MCCs to automate claim-level reporting. TDI will solicit feedback from stakeholders while developing the technical instructions for the file reporting to address compatibility with different carriers' systems. TDI will monitor implementation of the technical instructions as they relate to the first required reporting period and make adjustments as appropriate. TDI declines the commenter's request to revise the current reporting form (TDI Form FIN593), as the automated reporting system being implemented is intended to preclude the need for this form. Carriers will no longer use TDI Form FIN593 when they start reporting using the new process. Regarding the commenter's request for a secure method to upload information, TDI anticipates that the protections built into the TDI reporting system, combined with the required reporting of de-identified information (as is contemplated in the revised rule), will provide a secure method for carriers to upload their reports.

Comments on §21.2824

Comments. Two commenters oppose the proposed repeal of §21.2824. One opposing commenter notes that the applicability provision is useful and provides some clarity. One commenter asks where the suggestion to repeal §21.2824 came from, and why the repeal was proposed. Another commenter in opposition to the proposed repeal notes that §21.2824 provides important clarification about the types of entities that are subject to the prompt pay laws.

Agency Response. TDI acknowledges the commenters' concerns about the effect of the deletion of §21.2824. TDI proposed

the repeal as part of an ongoing effort to eliminate obsolete or outdated provisions. While TDI still thinks that the provision is no longer needed, TDI is withdrawing the proposed repeal of §21.2824 because stakeholders have indicated that the provision is useful to them.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §21.2821 under Insurance Code §§843.151, 1301.007, and 36.001.

Insurance Code §843.151 provides that the Commissioner may adopt reasonable rules as necessary and proper to implement Chapter 843.

Insurance Code §1301.007 provides that the Commissioner adopt rules as necessary to implement Chapter 1301 and to ensure reasonable accessibility and availability of preferred provider services residents of this state.

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.

§21.2821. Reporting Requirements.

(a) An MCC must submit to the department quarterly claims payment and related penalty and interest payment information, and information regarding complaints, in compliance with the requirements of this section.

(b) The MCC must submit the report required by subsection (a) of this section to the department on or before:

(1) May 15th for the months of January, February, and March of each year;

(2) August 15th for the months of April, May, and June of each year;

(3) November 15th for the months of July, August, and September of each year; and

(4) February 15th for the months of October, November, and December of
each preceding calendar year.

(c) The report required by subsection (a) of this section must include, at a minimum, the following information:

(1) number of claims received from noninstitutional preferred providers;

(2) number of claims received from institutional preferred providers;

(3) number of clean claims received from noninstitutional preferred providers;

(4) number of clean claims received from institutional preferred providers;

(5) number of clean claims from noninstitutional preferred providers paid within the applicable statutory claims payment period;

(6) number of clean claims from noninstitutional preferred providers paid on or before the 45th day after the end of the applicable statutory claims payment period;

(7) number of clean claims from institutional preferred providers paid on or before the 45th day after the end of the applicable statutory claims payment period;

(8) number of clean claims from noninstitutional preferred providers paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period;

(9) number of clean claims from institutional preferred providers paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period;

(10) number of clean claims from noninstitutional preferred providers paid on or after the 91st day after the end of the applicable statutory claims payment period;

(11) number of clean claims from institutional preferred providers paid on or after the 91st day after the end of the applicable statutory claims payment period;

(12) number of clean claims from institutional preferred providers paid within the applicable statutory claims payment period;

(13) number of claims paid under the provisions of §21.2809 of this title (relating to Audit Procedures);

(14) number of requests for verification received under §19.1719 of this title (relating to Verification for Health Maintenance Organizations and Preferred Provider Benefit Plans);

(15) number of verifications issued under §19.1719 of this title;

(16) number of declinations of requests for verifications under §19.1719 of this title;

(17) number of certifications of catastrophic events sent to the department;

(18) number of calendar days business was interrupted for each corresponding catastrophic event;

(19) number of electronically submitted, affirmatively adjudicated pharmacy claims received by the MCC;

(20) number of electronically submitted, affirmatively adjudicated pharmacy claims paid within the 18-day statutory claims payment period;

(21) number of electronically submitted, affirmatively adjudicated pharmacy claims paid on or before the 45th day after the end of the 18-day statutory claims payment period;

(22) number of electronically submitted, affirmatively adjudicated pharmacy claims paid on or after the 46th day and before the 91st day after the end of the 18-day statutory claims payment period; and

(23) number of electronically submitted, affirmatively adjudicated pharmacy claims paid on or after the 91st day after the end of the 18-day statutory claims payment period.

(d) An MCC must annually submit to the department, on or before August 15th, at a minimum, information related to the number of declinations of requests for verifications from July 1st of the prior year to June 30th of the current year, in the following categories:

(1) policy or contract limitations:

(A) premium payment time frames that prevent verifying eligibility for a 30-day period;

(B) policy deductible, specific benefit limitations, or annual benefit maximum;

(C) benefit exclusions;

(D) no coverage or change in membership eligibility, including individuals not eligible, not yet effective, or for whom membership is canceled;

(E) preexisting condition limitations; and

(F) other;

(2) declinations due to an inability to obtain necessary information to verify requested services from the following persons:

(A) the requesting physician or provider;

(B) any other physician or provider; and

(C) any other person.

(e) In addition to the information reported under subsection (c) of this section, the report required by subsection (a) of this section must also include, at a minimum, the following information:

(1) the total dollar amount of the claims described in each of the following subparagraphs:

(A) clean claims from noninstitutional preferred providers paid on or before the 45th day after the end of the applicable statutory claims payment period;

(B) clean claims from institutional preferred providers paid on or before the 45th day after the end of the applicable statutory claims payment period;

(C) clean claims from noninstitutional preferred providers paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period;

(D) clean claims from institutional preferred providers paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period;

(E) clean claims from noninstitutional preferred providers paid on or after the 91st day after the end of the applicable statutory claims payment period; and

(F) clean claims from institutional preferred providers paid on or after the 91st day after the end of the applicable statutory claims payment period;

(2) the dollar amount that the MCC paid late to an institutional preferred provider for each clean claim that the MCC paid to the institutional preferred provider:

(A) on or before the 45th day after the end of the applicable statutory claims payment period;

(B) on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period; and

(C) on or after the 91st day after the end of the applicable statutory claims payment period;

(3) the dollar amount that the MCC paid late to a noninstitutional preferred provider for each clean claim that the MCC paid to the noninstitutional preferred provider:

(A) on or before the 45th day after the end of the applicable statutory claims payment period;

(B) on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period; and

(C) on or after the 91st day after the end of the applicable statutory claims payment period:

(4) the amount of interest, based on the penalty dollar amount, that the MCC paid to the department for each clean claim that the MCC paid to a noninstitutional preferred provider on or after the 91st day after the end of the applicable statutory claims payment period;

(5) for each clean claim, the associated penalty dollar amount as reported under subsection (e), paragraphs (2) and (3) of this section; and

(6) the total number of written complaints received by the MCC for failure to pay a clean claim on timey.

(f) The claim-level data required by subsections (e)(2) - (e)(5) must be reported using a unique identifier for each claim, created and maintained solely by the MCC, that is not the claim number. The unique identifier must consist of no more than 15 characters and may not contain any of the identifiers listed in 45 C.F.R. §164.514(b). The MCC must relate the unique identifier back to the claim on request by the department during an examination.

(g) The quarterly report required in subsection (a) of this section must be submitted electronically as specified on the department's website.

(h) Subsections (e), (f), and (g) of this section apply to reports submitted under subsection (a) of this section beginning with the report required to be submitted by May 15, 2022, for the months of January, February, and March of that year.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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James Person
General Counsel
Texas Department of Insurance
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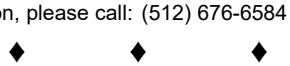

SUBCHAPTER AA. CONSUMER CHOICE HEALTH BENEFIT PLANS

The Commissioner of Insurance adopts the repeal of 28 TAC §§21.3525 - 21.3528 and the amendment of §§21.3530, 21.3535, and §§21.3542 - 21.3544, concerning required notices for consumer choice health benefit plans. The department adopts the repeal of §§21.3525 - 21.3528 and the amendments to §21.3542 and §21.3543 without changes to the proposed text published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8729). These rules will not be republished. The department changed proposed §21.3530 and §21.3535 in response to public comments and made additional changes to these sections and §21.3544 to provide corrections and clarification and to improve conformity between sections. The proposed text was published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8729). These rules will be republished.

REASONED JUSTIFICATION. The amended sections implement Insurance Code §1507.006, remove the renewal requirement for a consumer to sign a disclosure statement at renewal, remove the text of rules that duplicate statutory language, use plain language consistent with the agency's current

style, simplify disclosure forms, and improve the disclosure forms' readability and usability. The amended sections also help address areas of consumer confusion that result from the current disclosure form.

Descriptions of the amendments to the sections follow.

Repeal of §§21.3525 - 21.3528. Insurer Notice on Application, Insurer Notice on Policy, HMO Notice on Application, and HMO Notice on Evidence of Coverage. The repeal of §§21.3525 - 21.3528 removes unnecessary duplication of Insurance Code §1507.005 and §1507.055.

Section 21.3530. Health Carrier Disclosure. The amendments to §21.3530 clarify the required elements of a written disclosure for consumer choice plans; provide that the disclosure should be provided in a manner that enables a consumer to retain a copy; remove the requirements for Form CCP 1 from subsection (a) and provide similar requirements in new subsection (c); provide that Form CCP 1 may be used to fulfill the requirements of the section and is available on the department's website; incorporate standards of readability into the disclosure forms; provide that Form CCP 1 is not adopted by reference, but can be used by carriers if they choose; contain the written affirmation moved from §21.3542; require a disclosure form signature for initial coverage or enrollment; use plain language consistent with the agency's current style; and redesignate parts of the section to conform to amendments. In response to comment, §21.350(a) as proposed has been modified to replace "sufficient description" with "sufficiently detailed description."

In response to comment, §21.3530(c) as proposed has been modified to provide more useful information in the disclosure statement; instruct consumers to refer to the Summary of Benefits and Coverage for more information; refer consumers to a health carrier's state-mandated plan if there is one available; allow for disclosures on the federal exchange to be delivered in the plan brochure on the healthcare.gov website and acknowledged by signing an application to enroll in a plan; substitute the phrase "enrolling in coverage" for "renewing coverage;" and change internal designations and a reference to conform to the changes.

In addition, in response to comment, §21.3530(d) as proposed has been modified to remove the requirement that a disclosure statement be delivered at least 60 days before the renewal date.

Finally, in response to comment, §21.3530(e) as proposed has been modified to allow a health carrier in some instances to include the disclosure statement as the first page in the plan brochure provided on the healthcare.gov website.

In addition to the changes made to the proposed text in response to comment, the department has made the following changes to provide additional clarity, correct errors, and provide conformity within the text:

- eliminated a reference to a "paper copy" in proposed §21.3530(c) to conform with amendments allowing electronic copies;

- revised a reference in proposed §21.3530(c)(4) to correct a reference to a redesignated provision;

- eliminated a reference to a "current" policyholder in §21.3530(c)(4), since a signature is not required when coverage is renewed, and corrected a reference to conform to other changes made in subsection (c);

- revised §21.3530(c)(6) to remove the acknowledgment that the health carrier offered a state-mandated plan, and redesignate part of the paragraph, because this information is duplicative of the revised §21.3530(c)(5) and §21.3542;

- revised §21.3530(c)(8)-(9) and §21.3530(e)(2) to conform to revisions made to lessen confusion for consumers on the federal marketplace;

- added the word "and" to the end of §21.3530(d)(1);

- revised a reference in proposed §21.3530(g) to conform to revisions in §21.3530(e); and

- redesignated proposed §21.3530(i) - (k) as §21.3530(h) - (j) to conform to the elimination of proposed §21.3530(h).

Section 21.3535. Retention of Disclosure. The amendments to §21.3535 provide for retention of signed disclosure forms for five years; provide that insurers must retain copies of plan documents; substitute the term "electronically" for "by facsimile or email transmission;" and eliminate signatures on renewals where a current policyholder or contract holder is not required to sign a disclosure statement. In response to comment, §21.3535 as proposed has been modified to correct a reference to the written affirmation moved from §21.3542 to §21.3530.

Section 21.3542. Offer of State-Mandated Plan. Section 21.3542(d) is deleted because the requirement for a health plan to obtain an affirmation that it offered a plan containing all state mandates on a separate document was moved to the acknowledgments in §21.3530(c)(6).

Section 21.3543. Required Plan Filings. The amendments to §21.3543 incorporate a requirement similar to that in former §21.3530(i) that a disclosure form must be filed for approval; clarify that a consumer choice plan must be filed separately from any state-mandated plan; require that disclosures be separately filed for approval before use; and simplify the disclosure form.

Section 21.3544. Required Annual Reporting. Section 21.3544 is amended to change the annual reporting requirements for information on consumer choice plans and provide that data submission must be made on Form CCP 2. In subsection (a), the previous paragraphs (3), (5), and (6) are deleted. Previous paragraph (4) is renumbered as paragraph (3), and new paragraph (4) is added as a better way to collect the information previously requested under §21.3543(2)(B). Also, the previous subsection (b) is deleted because it provided a definition for a reporting requirement that was repealed from subsection (a). New subsection (b) is added to establish what constitutes the average premium index rate for the purpose of subsection (a) of the section.

In addition, the department made the following changes to the proposed text to allow additional time for compliance with the amendments and to correct errors within the text:

- inserted the designator for paragraph (3) in §21.3544(a) to correct its inadvertent omission from the published proposal;

- revised proposed §21.3544 to change the reporting date to June 1 to provide additional time for health carriers to implement the modifications, to ensure data is complete and is aligned with the historical data provided on the federal Unified Rate Review Template, and to avoid more concurrent data calls for health carriers and staff; and

- revised proposed §21.3544 to clarify the data to be reported and to remove a form revision date inadvertently contained in the proposal.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: A commenter in support of the proposal was Every Texan. A commenter in support of the proposal with changes was the Texas Medical Association. Commenters against the proposal were the Texas Association of Health Plans and the Texas Association of Life & Health Insurers.

Comments on the Proposal in General

Comment. One commenter says it appreciates the department's efforts to draft a more understandable disclosure form. The commenter notes that the plain language in the new form is a big improvement over the previous version and that the wording within the table itself is far more likely to be understood and empower a consumer to make an informed choice. The commenter encourages the department to move forward with the proposed form update for the large-employer market and grandfathered individual and small-group plans only.

The same commenter notes that for many consumers on the federal exchange, the disclosure form will tell them they could pay more to get a different plan with less coverage during the next open enrollment period almost a year away. The commenter found this information to not be useful and not worth the confusion and alarm that some consumers report. The commenter also notes that for federal exchange consumers, the timing of the disclosure form causes it to be delivered after, rather than before, the close of the open enrollment period, and thus to not be useful in making a choice of plans. The commenter notes that given how fundamentally individual and small-group plans have changed since the Affordable Care Act (ACA), it would make sense to re-envision any consumer choice plan disclosure to reflect realities in the post-ACA world. The commenter offers several suggestions to develop a different approach to revising the disclosure form, including legislative changes and a stakeholder meeting to discuss alternate approaches. The commenter also recommends that the department revise the proposed rules to reduce consumer confusion by letting federal marketplace consumers know:

- that a plan is compliant with the ACA and contains all essential health benefits; and

- whether a state-mandated benefit plan referenced is available on or off of the federal marketplace, whether they could use any premium subsidy or cost sharing reduction (CSR) for that plan, and when and how they could switch to it if desired.

Another commenter says that the only change made by Senate Bill 1852, 86th Legislature, 2019 to Insurance Code Chapter 1507 was to eliminate the signature requirement for the consumer choice disclosure statement on renewal. The commenter says that the proposed amendments make unnecessary and unreasonable changes to a process that is working well, has not created unreasonable compliance challenges, and has not been the subject of consumer complaints. The commenter says that the proposed amendments would require extensive planning by health carriers and introduce needless expenses and challenges. The commenter says that the current consumer choice rules do not need to be updated because the provisions of SB 1852 are clear, and the commenter recommends that any new rulemaking be strictly limited to implementation of SB 1852.

A third commenter also says that the proposed amendments make unnecessary and unreasonable changes to a process that is working well. The commenter says that the proposed changes would create undue burdens on health carriers and are more likely to create more consumer confusion. The commenter notes that the disclosures can cause confusion among consumers on the federal marketplace.

Finally, all three commenters say that this confusion occurs particularly because of department rules providing that HMOs may have only deductibles in consumer choice plans.

Agency Response. The department appreciates the support for the proposed amendments.

The department has addressed the revisions suggested by the second and third commenters in its responses to comments on §21.3530(c)(1) and §21.3530(c)(5)(C), and by the revisions to §21.3530(e)(2) described in the following paragraphs. Since the signature requirement has been removed, it is unnecessary to advise federal marketplace consumers that a failure to sign and return the form under §21.3530(c)(8) will not result in a loss of coverage or subsidy.

In general, the department disagrees with the second and third commenters on the utility of the proposed amendments. Updating the disclosure requirements results in a more understandable and usable disclosure form, eliminates consumer confusion, and fits within the requirements of Insurance Code §§1507.005, 1507.006, and 1507.009 without creating undue burdens on health carriers.

The department agrees that the current disclosure statement and its timing may cause confusion for some consumers on the federal exchange and has revised proposed §21.3530(e)(2) and deleted proposed §21.3530(h) in response. The revisions eliminate requirements to mail a disclosure statement to be signed after the consumer has already applied for and become enrolled in a plan on the federal exchange and provide a link to the disclosure statement. Instead, the revised text allows health carriers to include the disclosure statement as the first page in the plan brochure provided on the Healthcare.gov website.

The department agrees with the first commenter's suggestions for improving the disclosure form and has expanded §21.3530(c)(1) to add language explaining, if applicable, that the plan includes federally required essential health benefits and complies with the ACA. The department also added §21.3530(c)(5)(C), which informs the consumer whether the state-mandated plan is available on Healthcare.gov and explains whether the state-mandated plan will qualify for reduced premiums and cost sharing.

Comment on repeal of §§21.3525 - 21.3528

Comment. One commenter says that while the underlying statutory provisions (i.e., Insurance Code §1507.005 and §1507.055) contain the required statements that are proposed for repeal, retaining the language in the rules promotes health carrier compliance and consumer understanding of the requirements imposed on health carriers by presenting all the relevant language in one location, rather than requiring toggling back and forth between the Insurance Code and regulations. The commenter says that the current rules offer greater consumer protection than the statutory language because they impose a minimum font-size requirement for the required application and policy/evidence of coverage statements (i.e., no less than 12-point type), which is not expressly stated in the statute. The commenter says that if the department repeals §§21.3525 - 21.3528, health carriers may start reducing the font size of these important notices, resulting in fine-print notices that undermine both the conspicuousness and readability of the required statements.

Agency Response. The department disagrees with the commenter and declines to withdraw the repeal of §§21.3525 - 21.3528. The proposed amendments will not adversely affect health plan compliance or consumer understanding, but will instead make the disclosures easier to comprehend. Further, eliminating repetition of statutory requirements in the rules will aid health carrier compliance and consumer understanding, because this repetition has in the past caused statutes and rules to conflict and caused confusion when the former are amended and the latter were not. The department also notes that requirements in 28 TAC §3.602 will prevent fine-print disclosures, since policies and applications must use at least a 10-point font size. Section 21.3530(c) also requires the disclosure form to use at least a 12-point font size.

Comment on §21.3530(a)

Comment. One commenter requests that Form CCP 1 be made mandatory and that the department modify the language in the proposed amendments and the form to also include a reference to Form CCP 1 in §21.3530(a). The commenter recommends that the department strike "sufficient" as the modifier of the description of state-mandated benefits that are reduced or not included in the plan and replace it with a requirement for a "sufficiently detailed" description to ensure that consumers receive all necessary information.

Two other commenters ask that the department confirm and clarify that the disclosure statement may be provided electronically, which will allow the applicant to print and keep a paper copy or retain an electronic copy.

Agency Response. The department declines to make Form CCP 1 mandatory. The department does not want to prevent health carriers from customizing disclosures to accurately describe their plans. The amendments to §21.3543 make clear that plans must file disclosures with the department for approval. This review ensures that disclosures will not be modified in a way that violates the rules or misleads consumers.

The department agrees that "sufficiently detailed" conveys the requirement the department proposed and has changed the text of §21.3530(a) as proposed to clarify the subsection and make it clear the disclosure statement may be provided electronically. The department has made these revisions.

Comment on §21.3530(b) and (c)

Comment. One commenter notes that the department proposes to make the use of Form CCP 1 optional, though with some conditions. The commenter strongly objects, stating that the use of Form CCP 1 should be mandatory with no option to use a different disclosure form, because a single, uniform disclosure form would be more user friendly. The commenter says that a single, standard form would allow consumers to more easily compare disclosure forms from initial coverage to renewal and from plan to plan. The commenter says that discerning differences in health carrier coverage can be a difficult task, even for experts in the health care field, and the department should standardize the required form to remove any extra layers of difficulty associated with consumer reviews of these health carriers.

Agency Response. As previously noted, the department does not want to prevent health carriers from customizing disclosures to accurately describe their plans. The department wants to be flexible, while still requiring, as these amendments do, health carriers to provide sufficient information for consumers to be able to make intelligent decisions. Plans are required to be filed before use, which gives the department time to review and approve them, and this should sufficiently protect the ability of consumers to get the information they need. The department declines to make the requested revisions.

Comments on §21.3530(c)

Comment. One commenter asks that §21.3530(c) be modified to include the elements of the disclosure statement as required elements in Form CCP 1, and that the amendment at the beginning of the sentence to permit a health-plan-generated disclosure statement be rejected.

Agency Response. The department agrees that all substantive elements in Form CCP 1 should be required. However, these elements are already present in the requirements of §21.3530(c) as amended, so it is not necessary to further revise the provision and the department declines to make a change.

Comment. One commenter recommends that the department revise the proposed amendments to §21.3530(c)(1)-(3) to reduce consumer confusion by telling federal marketplace consumers that a plan is compliant with the ACA and contains all essential health benefits.

Another commenter supports requiring plans to identify the consumer choice benefit plan being offered or purchased. The commenter says that this is basic information, which is useful to the consumer for multiple reasons, including supplying the consumer with information needed to enable him or her to ask the department relevant questions about the plan and to comparison shop.

Agency Response. The department believes the information required here effectively identifies the plan being offered or purchased and makes it easy to compare plans and understand the benefits that are not available in a consumer choice plan. The description should clearly explain the nature of a reduced benefit, such as coverage that is subject to visit limits, and Form CCP 1 provides examples of how health issuers can explain reduced or excluded benefits. Instructing consumers to refer to the Summary of Benefits and Coverage to see the specific level of benefits provided by the plan should resolve the commenters' concerns and allow consumers to obtain the information needed, and the department has changed the text of §21.3530(c)(3) as proposed to include such an instruction.

The department agrees that it would reduce consumer confusion if federal marketplace consumers were told whether a plan is ACA compliant and contains all essential health benefits, and it has changed the text of §21.3530(c)(1) as proposed accordingly.

Comment. One commenter says that the proposed amendments are overly burdensome with no corresponding increase in consumer protection.

That commenter and a second commenter say that the proposed amendments to §21.3530(c)(1) are burdensome, overly detailed, and contain unnecessary new requirements. The commenters say that requiring a unique disclosure form for every plan offered--with each copay, coinsurance, deductible, etc., option being a separate "plan"--is overly burdensome.

The second commenter also says that the proposed amendments go beyond what Insurance Code §1507.006 currently requires.

Both commenters say that the proposed requirements are especially problematic for individual plans offered on the federal exchange, where the majority of plans offered are consumer choice

plans. The commenters say that because the process is typically entirely electronic, mandating multiple changes to the disclosure and plan selection process would require massive changes to the current electronic workflow and "shopping cart" process. The commenters ask the department to confirm that the form could include several variations within one disclosure document. For example, that the form could indicate "Plan 001 has a $200 Deductible; Plan 002 has a $400 Deductible; and Plan 003 has a $500 Deductible."

The commenters say that the proposed requirement to have unique disclosure forms for each plan variation creates a tremendous increase in the work necessary to comply with the regulations, and that one large health carrier estimated it would be required to update and file for approval over 100 forms in order to cover each plan combination, and that such additional requirements act as a barrier to entry in the Texas individual exchange market. The commenters say that the proposal's cost note does not account for this volume and that the proposal creates requirements for additional filings with CMS. The commenters say that the volume of unique forms also creates opportunity for error because of the need to match each distinct disclosure form with the appropriate application form.

Agency Response. The department understands the concerns about unique disclosures, and it has changed the text of §21.3530(c) as proposed to require a sufficient amount of detail on how the plan varies from the state-mandated plan, while not requiring the disclosure to include the specific level of benefits provided by the plan. The department believes this will allow more general disclosures that can describe multiple plans, rather than requiring unique disclosures for every plan variation offered. This change will resolve the difficulties expressed by the commenters.

Comment. One commenter requests that §21.3530(c)(2) be revised to require identification of the consumer choice benefit plan being offered or purchased. The commenter says this is basic information, which is useful to the consumer for multiple reasons, including supplying the consumer with information needed to enable him or her to ask the department relevant questions about the plan and to comparison shop.

Agency Response. The department disagrees, because consumers can rely on health carrier applications and the federally required summary of benefits and coverage when comparison shopping, and this should provide them with the information they need to comparison shop. The primary purpose of the disclosure form is to help consumers understand that the plan has reduced or excluded one or more benefits that would be required in a state-mandated plan, and ensure they understand where they can find a plan with all state-mandated benefits. To reduce the burden of creating more detailed disclosures, the department has revised subsection (c)(2) as proposed. As adopted, subsection (c)(2) requires detailed benefits information and new subsection (c)(3) instructs consumers to refer to the Summary of Benefits and Coverage to see the specific level of benefits the plan provides.

Comment. One commenter supports the language in §21.3530(c)(3) as proposed, saying that it is more detailed than the language in subsection (a)(2), which it appears to replace, and provides information that should be useful to consumers in evaluating whether to select a plan. The commenter suggests that rather than merely listing each health benefit or coverage, the department require a clear comparison between the state-mandated benefit level and a consumer choice health benefit plan, and the commenter suggests language to that effect. The commenter suggests that to enhance consumers' decision-making prior to enrolling in a consumer choice health benefit plan, the disclosure statement should provide tangible examples of what it means for a plan to offer a "reduced" benefit rather than no coverage at all.

Agency Response. The department appreciates the support for the proposed language. The department has adopted language enabling comparisons, including comparisons of "reduced" benefits and coverage, in subsections (c)(2) and (c)(3). The information required by the adopted subsections will make it easier for a consumer to compare plans and understand the benefits that are not available in a consumer choice plan. The description required should clearly explain the nature of a reduced benefit, such as coverage that is subject to visit limits, and Form CCP 1 provides examples of how health carriers can explain reduced or excluded benefits.

Comment. One commenter strongly supports the proposed language in §21.3530(c)(4) to aid in putting consumers on notice when a state-mandated benefit is modified on renewal. The commenter recommends that the language be made more conspicuous by requiring health carriers to include this language in all capital letters and specifically itemize the changes from their last plans. The commenter also recommends inclusion of language explaining that choosing a consumer choice of benefit plan may result in unanticipated out-of-pocket costs if the policyholder requires excluded services during the benefit year.

Agency Response. The department appreciates the support for the proposed amendment, but it declines to require capital letters or itemized changes from previous plans, because the plan references in the remainder of the subsection will provide sufficient information for consumers to be able to intelligently evaluate plans without including more warning language. The department has also corrected a reference to conform to changes made to subsection (c).

Comment. One commenter recommends that the department reduce consumer confusion by revising proposed §21.3530(c)(5) to require that the disclosure statement tell federal marketplace consumers whether a referenced state-mandated benefit plan is available on or off of the federal marketplace, whether consumers could use any premium subsidy or CSR for that plan, and when and how consumers could switch to the plan if desired.

Another commenter supports the proposed language.

A third commenter says that the language as proposed is ambiguous because it suggests that insurer may have to offer state-mandated plans other than those plans offered by the insurer.

A fourth commenter says that the rules should clarify that health carriers are not required to identify plans offered by other health carriers.

The third and fourth commenters say that the proposed amendments require the disclosure to identify the state-mandated plan that is most like the consumer choice health benefit plan being offered, and provide: "... (B) a URL that connect the consumer either to the summary of benefits and coverage for that state-mandated plan ...." The commenters say that this requirement is extremely burdensome for each of the distinct plan variations and will require extensive manual labor as well as computer programming expenses.

Agency Response. The department appreciates the support for the proposed language. The department agrees it will reduce consumer confusion to revise the proposed rules to require that the disclosure statement tell individual market consumers whether the state-mandated benefit plan is available on or off of the federal marketplace and whether they could use any premium subsidy or CSR for that plan, and the department has changed §21.3530(c)(5)(C) as proposed to require this. Due to the range of timing and circumstances, the department declines to require that the disclosure form include information on how consumers can switch plans, but does require the disclosure to include an acknowledgement in §21.3530(c)(6)(C) that, in most cases the consumer will not be able to get a new plan until the next open enrollment period.

The department has changed the language as proposed in this subsection to require the health carrier to identify one or more state-mandated plans it offers and require a URL that connects to the health carrier's website where the state-mandated plan is available for purchase. This requirement should be less burdensome for health carriers, while continuing to ensure that consumers are able to access the state-mandated plan. The adopted language makes clear that health carriers are required to only provide information about the state-mandated plans they offer and does not require health carriers to identify plans offered by their competitors.

Comment. One commenter supports the proposed language in §21.3530(c)(6), but asks that the department clarify that these acknowledgements must be included in all disclosure forms since the statutory language in Insurance Code §1507.006(a)(3) and §1507.056(a)(3) requires the disclosure form, regardless of whether it is the initial enrollment or renewal, to include for individual policyholders a "notice that purchase of the plan may limit the policyholder's future coverage options in the event the policyholder's health changes and needed benefits are not available under the standard health benefit plan."

The commenter says that it appears that the department intends for subsection (c)(6)(D) to replace the previous subsection (a)(3), which required this information in all disclosure forms, consistent with the underlying statutory language. The commenter says the only distinction that the department is attempting to make in subsection (c)(6) is to provide that the policyholder's or contract holder's initials are not required to be obtained on the renewal disclosure form, since the requirement for the renewal to be signed was removed with the passage of SB 1852.

The commenter requests that, if the department moves forward with the language in proposed §21.3530(f), which would require the health carrier to request a signature on the written disclosure statement any time a policyholder is renewing coverage under a different consumer choice plan from the plan for which the initial disclosure was signed, the department also modify the proposed requirement to seek initials for the acknowledgements contained in proposed subsection (c)(6) to include those renewal disclosure forms as well.

Another commenter notes that the proposed amendments add a requirement that the applicant initial "to affirm understanding." The commenter says that adding the words "to affirm understanding" is unnecessary and could be ambiguous in such a manner as to lead to disputes after the fact. The commenter said that this could lead to unnecessary litigation, both with applicants and health carriers, and to unnecessary disputes with department examiners and enforcement personnel. The commenter says that these three words are not necessary, and an acknowledgement should speak for itself. The commenter also says that the requirement to "affirm understanding" is not required in Insurance Code Chapter 1507 and was not required by the changes contemplated by SB 1852.

Agency Response. The department appreciates the support for the proposed language. The department agrees that the required acknowledgements should be included on all disclosure forms provided both to applicants for initial coverage and upon renewal. The department agrees that the requirement to "initial to affirm understanding" has caused some confusion, and it has changed the language in subsection (c)(6) as adopted to eliminate the requirement. The department has also changed §21.3530(f) as proposed to clarify that a signature on the disclosure is required only when a policyholder is enrolling in a particular plan for the first time, so it is unnecessary to make the change suggested by the first commenter.

The department has eliminated the proposed requirement in §21.3530(c)(6)(C) for an acknowledgment that the health carrier offer a state-mandated plan, because this requirement is duplicative of the adopted §21.3530(c)(5) and §21.3542. Proposed §21.3530(c)(6)(D) has been redesignated §21.3530(c)(6)(C) as a result.

Comment. One commenter notes that the proposed language in §21.3530(c)(7) largely tracks previous subsection (a)(5), but says that the proposed language omits the requirement for the disclosure to state that the right to the copy is to be free of charge. The commenter recommends that the department include that language so that subsection (c)(7) reads "inform the prospective or current policyholder or contract holder that the prospective or current contract holder has the right to a copy of the written disclosure statement free of charge." The commenter says it presumes that the department struck the "free of charge" language because it was added to proposed subsection (i). However, the commenter says that it is important to have that language in both places, because the language in subsection (c)(7) is to inform the policyholders and contract holders of their rights, while the language in (i) requires the health carrier to follow through with provision of the copy free of charge.

Agency Response. The department disagrees and declines to make the requested change because the requirement adopted in subsection (h), which was proposed as subsection (i), is sufficient to require the provision of copies free of charge. The department has changed the text of §21.3530(c)(7) as proposed and Form CCP 1 to state that a "health carrier must provide" a copy of the written disclosure statement "upon request." The department has omitted the "free of charge," language for the sake of plain language and brevity, and also because it is unlikely a consumer would think a fee would be required to obtain a copy of the statement.

Comment. One commenter recommends that the department reduce consumer confusion by revising proposed §21.3530(c)(8) to require that the disclosure tell federal marketplace consumers they will not lose their coverage or subsidy if they do not sign and return the form.

A second commenter supports the requirement for the disclosure to include the "don't sign this document" language in proposed subsection (c)(8), to encourage those who do not understand the contents of the document to seek additional information prior to signing.

A third commenter says that the proposed amendment requires language about not signing the disclosure statement that is not

required by statute, and it appears to be an attempt by the department to legislate requirements by rule. The commenter says this has never been required for consumer choice plans since they were originally authorized in 2005, and that no statutory authority exists to add this requirement. The commenter says adding this now seems intended to make it more difficult for compliance and more difficult to complete the sale of consumer choice plans. The commenter recommends the proposed amendments to §21.3530(c)(8) not be adopted.

Agency Response. The department believes the changes made to §21.3530(c)(8) and (9) and (e)(2) as proposed and the exclusion of proposed §21.3530(h) address the issue of federal marketplace consumers being concerned that they will lose their coverage or subsidy if they do not sign the form. As adopted, §21.3530(c)(8) requires the disclosure to inform federal marketplace consumers that their application to enroll provides acknowledgement of the disclosure. As adopted, §21.3530(c)(8) does not require a signature line on the disclosure statement for federal marketplace consumers, but provides that signing the application there constitutes an acknowledgment. This resolves the concerns of the second and third commenters.

The department disagrees with the third commenter; the "don't sign this document" language is reasonable and consistent with the department's rulemaking authority, particularly since the disclosure and signature required by the statute make little sense if the disclosure is not understood, and the department believes health carriers and agents want their consumers to properly understand the products being sold and the benefits that are and are not included in those products. As adopted, the "don't sign this document" language has been moved to §21.3530(c)(9).

Comment. One commenter says that the language in proposed §21.3530(c)(9) requiring a signature space on initial enrollment appears to conflict with proposed new language in §21.3530(f), which would require a carrier to request a signature on the written disclosure statement any time a policyholder renews coverage under a different consumer choice plan from the plan for which the initial disclosure statement was signed. The commenter asks that this language be modified to more clearly include these disclosure form signatures, as well as initial coverage or enrollment signatures, if the department moves forward with subsection (f).

Agency Response. The department has changed the text of §21.3530(c)(9) as proposed to clarify when and how the disclosure form requires a signature. The department eliminated the reference to a "current" policyholder, since a signature is not required when coverage is renewed. As adopted, §21.3530(c)(9) does not require a signature line on the disclosure statement for federal marketplace consumers when a disclosure is delivered consistent with §21.3530(e)(2). Section 21.3530(c)(9) does not conflict with adopted subsection (f), which requires a signature when a consumer enrolls under a different plan. As adopted, the subsection contains the "don't sign this document" language proposed in §21.3530(c)(8).

Comment. One commenter supports proposed §21.3530(d) requiring notice of the disclosure form prior to renewal to allow for comparison shopping, particularly if the 60-day window falls within an open enrollment period for marketplace and individual plans. However, the commenter says that receipt of the offer of renewal may be necessary to better assess the value of the plan when comparison shopping and some consumers may misplace the disclosure form if it is not received along with the offer of renewal. The commenter recommends that the health carrier be required to send an additional copy of the disclosure form along with the renewal offer if the renewal offer is sent fewer than 60 days before the renewal date.

Two more commenters say that subsection (d) requires that the mandated disclosure be provided at least 60 days before the renewal date. The commenters says that the proposed provision is likely based on an assumption that all benefit changes are made by the health carrier, but the commenters point out that is not always the case. The commenters say employer-based groups may choose to make minor benefit changes, and they often do not make their final renewal decisions until very late in the plan year, so the proposed requirement hampers consumer choice. The commenters say the 60-day advance notice requirement is presumably based on the "guaranteed renewability" provisions of Insurance Code §1501.108, which require 60 days' advance notice only for changes made at the direction of the plan, but does not apply to changes made at the policyholder's request. The commenters note that 28 TAC §3.3038 also allows health carriers to make modifications to individual plans at a policyholder's request. The commenters say §21.3530 should likewise not mandate a 60-day-notice requirement for changes to consumer choice plans made at the request of the policyholder.

Agency Response. The department agrees with the second and third commenters and not with the first. Furnishing a copy of the disclosure form along with the renewal offer is more conducive to consumer understanding than mandating 60 days' advance notice. However, one copy of the disclosure should be sufficient and avoid unnecessary duplication. The department agrees with the second and third commenters on notices for changes made at the request of the policyholder and has removed the 60-day language.

Comment. One commenter supports the proposed language in §21.3530(f), because it helps address the underlying policy concern of reducing the administrative burden of obtaining a signature on an unchanged renewal policy, while continuing to acknowledge that consumers need to be informed of policies or contracts when renewing under a different consumer choice plan, because there may be material differences from the prior disclosure form.

The commenter suggests that the proposed language be changed to require that the health carrier not only request but also obtain the policyholder's or contract holder's signature on the disclosure statement. The commenter notes that proposed §21.3530(f) and §21.3530(c)(4) work in concert to help ensure that a policyholder or contract holder is notified of the material changes when renewing a policy or contract, and asked that the department adhere to its historically strong consumer protection stance and include both of these provisions in the final rule. The commenter says it is not administratively burdensome for health carriers to be required to include the single sentence in the disclosure form that is required under proposed §21.3530(c)(4), and notes that the requirement to obtain a signature for disclosures on policies or contracts when a policyholder is renewing coverage under a different consumer choice plan is still a significant reduction of administrative burden over the prior statutory requirement to obtain signatures on all renewal disclosure forms. The commenter says it makes sense to adopt both of these proposed rule provisions.

Agency Response. The department appreciates the support for the proposal, but disagrees with the suggested change because under Insurance Code §1507.006 and the section as adopted, a signature is not required on renewal. "Enrolling in" differs from "renewal" in that the former clearly entails a new or different plan,

while the latter does not. The department has changed the language proposed in §21.3530(f) to refer to "enrolling in," rather than "renewing."

Comment. One commenter objects to the proposed amendment to §21.3530(f)(2), which it says would require health carriers to "request a signature" on disclosure statements when there is a "material change" in a policy on renewal. The commenter says this was a continuation of the signature requirement on renewal eliminated by SB 1852.

Another commenter objects to the proposed amendments, which it says require a signature any time a policyholder is renewing coverage under a different consumer choice plan, including "discontinuation and replacement" scenarios that may occur because of federal or state requirements unrelated to "mandated benefits." The commenter says that both state and federal law require at least 90 days' advance notice of such changes, so a signature should not be required.

A third commenter says it is confused about why a requirement to "request a signature" is meaningful.

Agency Response. As noted in response to previous comments, the department has adopted language different from what was proposed in §21.3530(f) to refer to "enrolling in," rather than "renewing," because a signature is no longer required on renewal. Thus, "renewal" is not at issue in the rule. This should resolve the expressed objections.

With regard to requesting a signature, Insurance Code §21.3530 requires disclosure forms to be signed and retained. The requirement to request a signature works in conjunction with the statute and §21.3530(g), to ensure that applicants receive and sign the disclosure.

Comment. One commenter suggests that, in accord with its suggestion to require obtaining signatures for renewals referenced under proposed subsection (f)(2), subsection (f) retain the references to current policyholders or contract holders and instead modify the introductory clause of §21.3530(g) to read as follows: "Except as provided by subsection (i) of this section or for renewals falling outside of subsection (f)(2), ... "

Agency Response. As adopted, the section does not require a signature on renewal, so the department declines to make the change suggested by the commenter. Instead, the department has changed the introductory clause to conform to adopted changes in §21.3530(e).

Comment. One commenter recommends that §21.3530(h) retain references to current policyholders or contract holders.

Agency Response. The subsection dealt with the delivery of notice. The department has deleted the subsection to conform to the changes in §21.3530(e)(2), to which this subsection referred. Section 21.3530(e)(2) now contains the references to current policyholders or contract holders. As a result, the reference to current policyholders or contract holders is no longer necessary here.

Comments on §21.3535

Comment. One commenter recommends that in §21.3535(a) the department require retention of the disclosure form only, or at least clarify that the coverage documents do not need to be retained together with the coverage documents. The commenter says that requiring retention of the plan documents as well creates an unnecessary administrative burden for health carriers, since the department should be able to compare the notice with form filings made by the health carrier, if necessary.

Another commenter says that the proposed amendments change the retention period from five to six years and states no opposition to that. However, the commenter says the proposed amendments also potentially add confusion to the record-keeping requirement by adding the following language: "after the date a consumer choice health benefit plan terminates." The commenter asks whether this means each plan offered to a specific group or individual, or whether it instead refers to the various plans that may be offered by a health carrier.

Agency Response. The amendments to §21.3535(a) do not materially change the retention period, since retaining documents for five years after a plan terminates is equivalent to retaining them for six years after the disclosure is signed, and since the previous rules required a signature at each renewal. The retention period applies to plans offered to a specific group or individual. The department agrees that retaining the disclosure statement is sufficient to allow the department to review the statements, so it has changed §21.3535 as proposed to require retention of only the disclosure statement.

Comment. One commenter says that amendments to §21.3535(b) increase the documents required to be maintained by adding: "and plan documents that show which benefits or coverages were not provided at the state-mandated level in the issued consumer choice health benefit plan."

The commenter says the applicable statutory provisions only require maintenance of the signed disclosure statement, but that the proposed amendments add additional requirements not addressed in Insurance Code Chapter 1507 and are vague and ambiguous. The commenter asks whether the proposed amendments refer to the plan documents shown in each signed disclosure, or more broadly to state-mandated coverages a particular health carrier offers at the time a consumer choice plan is chosen by an applicant. The commenter says that this may substantially increase record keeping and other requirements, because some changes in state-mandated plans are made by the Texas Legislature and others by changes at the federal level. The commenter opposes the proposed amendment to §21.3535(b).

Agency Response. The department agrees that retaining the disclosure statement is sufficient to allow the department to review the statements, if necessary, so it has made that change in the section to §21.3535 as proposed.

Comments on §21.3543

Comment. One commenter asks the department to clarify what "separate" means in the proposed amendments to §21.3543(1): i.e., two different SERFF filings or two different sets of forms?

Agency Response. "Separate" in the proposed amendments to §21.3543(1) means two different forms or sets of forms, with distinct form numbers, that are submitted in separate SERFF filings.

Comment. One commenter opposes the proposed deletion of the requirement in §21.3543(2)(B) to submit a statement of the reduction in premium resulting from the differences in coverage and design between the consumer choice health benefit plan and an identical plan providing all state-mandated health benefits. The commenter says this information is necessary for state policy makers, the public, and the department to better evaluate the effect of consumer choice plans on health care costs and coverage.

Agency Response. The department agrees that the information might ideally be useful at times, but declines to make the suggested change. As it is currently collected with form filings, the data is not submitted in a uniform format or in a way that allows the department to aggregate the data. Additionally, the amendment to §21.3544(a)(4) will require substantively the same information in a consistent data format that can be better understood and shared with policy makers.

Comment on §21.3544 and Form CCP 2

Comment. One commenter opposes deleting some of the annual reporting data elements in §21.3544. The commenter says that on their face, these data elements appear to be useful for assessment of the impact of these plans on Texans. The commenter recommends retaining the required data elements. The commenter says that the frequency of data elements being requested should not be the sole determinant of their value to the department or the Texas Legislature for future regulatory efforts directed at these plans.

A second commenter says that current and proposed §21.3543 require health carriers to file the rates to be used with a consumer choice plan with the department, and the commenter objects to the proposed requirement for an additional annual filing of the average premium index rate as unnecessary and overly burdensome.

A third commenter says that the proposed requirement for health carriers to calculate and report average premium indexes for both consumer choice and state-mandated plans appears to be inconsistent with Insurance Code §551.008 by requiring separate calculations. The commenter says that Insurance Code Chapter 1507 only requires filing of rates for consumer choice plans regulated under the chapter, yet the proposed amendments require similar calculations and filings as data for both state-mandated and consumer choice plans.

A fourth commenter says several of its members have asked why Form CCP 2 needs to be changed. The commenter says that data elements have been programmed and reported consistently since the inception of the consumer choice plans, and changes now will require significant reprogramming and IT costs for every health carrier.

Agency Response. The department agrees that some of the old annual reporting data elements might ideally be useful at times. However, the department declines to make the change suggested by the first commenter because the data collected under the section were not being used, and the section merely imposed a reporting burden without a corresponding benefit. The amendments to §21.3544 retain the collection of information that is most relevant to policymakers, while reducing the reporting burden by eliminating data elements that are of limited value.

The proposed requirement for health carriers to provide premium index rates for consumer choice and state-mandated plans replaces the requirement to provide a statement of the reduction in premium resulting from the differences in coverage and design between the consumer choice health benefit plan and an identical plan providing all state-mandated health benefits, which has been removed from §21.3543. Both requirements are derived from the health carrier's rates, and the new language does not require a health carrier to develop information it does not already have readily available. The adopted requirement allows the department to aggregate this information and present it in a uniform format, without increasing the reporting burden.

The department assumes the third commenter's reference to Insurance Code §551.008, which does not exist, should actually be to Insurance Code §1507.008. The department does not agree that the proposed rule is inconsistent with §1507.008, which requires an informational rate filing. Section 21.3544 and Form CCP 2 instead requires an additional data element as a part of a larger data filing requirement relating to data covering a number of aspects of consumer choice plans.

The department has made changes to §21.3544 as proposed. First, the reporting date has been changed to June 1 to provide additional time for health carriers to implement modifications necessary due to the amendments, to ensure data is complete and aligns with the historical data provided on the federal Unified Rate Review Template, and to avoid more concurrent data calls for health carriers and staff. Second, the department understands that the term "premium index rate" does not have a common meaning for plans that are not required to use the federal Unified Rate Review Template. Therefore, that term has been changed to "average premium rate." Third, to simplify reporting, the department has added clarification on how a health carrier should report the average premium rate, depending on whether health carriers are required to develop rates using the federal Unified Rate Review Template definition. Health carriers with such a requirement may simply use the average plan-adjusted index rate they have already submitted. Health carriers that do not have such a requirement would report average rates based on per member per month earned premiums as proposed. Finally, the instruction regarding projected rates has been removed, since the report is due June 1 for plans sold in the previous calendar year.

The department does not agree that reducing the data elements will cause significant IT costs, because the revised requirements are less burdensome than those under the previous rule.

DIVISION 3. REQUIRED NOTICES

28 TAC §§21.3525 - 21.3528

STATUTORY AUTHORITY. The department adopts the repeal of 28 TAC §§21.3525, 21.3526, 21.3527, and 21.3528 under Insurance Code §1507.009 and §36.001.

Insurance Code §1507.009 provides that the Commissioner shall adopt rules necessary to implement Chapter 1507.

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

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 May 18, 2021.

TRD-202101969
James Person
General Counsel
Texas Department of Insurance
Effective date: June 7, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 676-6584

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28 TAC §21.3530, §21.3535

STATUTORY AUTHORITY. The department adopts amendments to 28 TAC §21.3530 and §21.3535 under Insurance Code §§36.001, 1507.005, 1507.006, and 1507.009.

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

Insurance Code §1507.005 provides that each written application for participation in a standard health benefit plan must contain certain language.

Insurance Code §1507.006 requires health carriers providing standard health plans to provide a proposed policyholder or policyholder with certain written disclosures. The section also requires each applicant for initial coverage to sign the disclosure statement provided by the health carrier, and it requires the health carrier to retain the signed disclosure statement.

Insurance Code §1507.009 provides that the Commissioner adopt rules necessary to implement Chapter 1507.

§21.3530. Health Carrier Disclosure.

(a) A health carrier offering or providing a consumer choice health benefit plan must provide each prospective or current policyholder or contract holder with a written or electronic disclosure statement in a manner that gives the policyholder or contract holder the ability to keep a copy of the disclosure statement. The disclosure statement must provide a sufficiently detailed description of the state-mandated health benefits that are reduced or not included in the plan to enable the prospective or current policyholder or contract holder to make an informed decision.

(b) Form CCP 1 fulfills the requirements of this section and is available on the department's website at www.tdi.texas.gov.

(c) If a health carrier chooses to generate its own disclosure statement, it must comply with readability standards applicable to forms reviewed under Chapter 3 of this title (relating to Life, Accident, and Health Insurance and Annuities) and Chapter 11 of this title (relating to Health Maintenance Organizations) and the statement must use at least 12-point type. The disclosure statement also must:

(1) acknowledge that the consumer choice health benefit plan being offered or purchased does not provide some or all state-mandated health benefits and explain, if applicable, that the plan does include all health benefits required by the Affordable Care Act;

(2) in plain language, list each health benefit or coverage not provided at the state-mandated level in the consumer choice health benefit plan, define the listed health benefit or coverage, describe the benefit or coverage in the consumer choice plan being offered, and describe the benefit or coverage that would be provided in a state-mandated plan;

(3) instruct consumers to refer to the Summary of Benefits and Coverage to see the specific level of benefits provided by the plan;

(4) when applicable because the health carrier has materially modified a consumer choice plan in a way that necessitates a change to the disclosure, or when the disclosure must be updated to reflect changes in state law, contain the following language, in bold type, directly above the list required by paragraph (2) of this subsection, as applicable:

(A) "The benefits or coverages you are agreeing to on this renewal are different from your current plan."; or

(B) "The benefits required by state law have changed since you first received this disclosure.";

(5) explain that the health carrier offers one or more state-mandated plans and provide:

(A) a phone number where the consumer can purchase the state-mandated plan;

(B) a URL that connects the consumer to the health carrier's website where the state-mandated plan is available for purchase; and

(C) for individual market plans, indicate whether the state-mandated plan is available on the federal health benefit exchange and if it is not, explain that the plan will not qualify for reduced premiums or cost-sharing;

(6) contain acknowledgments of the following:

(A) that the consumer choice health benefit plan does not provide the same level of coverage required in a state-mandated plan;

(B) that more information about consumer choice health benefit plans is available from the department either online at www.tdi.texas.gov/consumer/consumerchoice.html, or by calling the TDI Consumer Help Line at 1-800-252-3439; and

(C) if the plan is being issued in the individual market, that if the plan does not meet the consumer's needs, in most cases the consumer will not be able to get a new plan until the next open enrollment period;

(7) inform the prospective or current policyholder or contract holder that the health carrier must provide a copy of the written disclosure statement upon request;

(8) for a disclosure being delivered consistent with subsection (e)(2) of this section, include the following language in bold type, directly above the acknowledgements in paragraph (6) of this subsection: "By signing your application to enroll in this plan, you acknowledge the following:"; and

(9) for initial coverage or enrollment, other than for a disclosure being delivered consistent with subsection (e)(2) of this section, provide space for the prospective policyholder or contract holder to print and sign their name, and to sign to acknowledge receipt of the disclosure statement, accompanied by the following language in bold type: "Don't sign this document if you don't understand it. No firme este documento si no lo comprende."

(d) A health carrier must provide the written disclosure statement described in subsection (a) of this section:

(1) to a prospective policyholder or contract holder, not later than the time of the offer of a consumer choice health benefit plan, except as provided by subsection (e) of this section; and

(2) to a current policyholder or contract holder, along with any offer to renew the contract or policy.

(e) A health carrier must provide the written disclosure statement described in subsection (a) of this section to a prospective or current policyholder or contract holder applying for coverage through the federal health benefit exchange as follows:

(1) at the time of application, if the federal health benefit exchange provides a mechanism for a health carrier to provide the written disclosure statement and obtain a signature at the time of application; or

(2) if the health carrier is unable to provide the written disclosure and obtain a signature at the time of application, the health car-

rier must include the disclosure statement as the first page in the plan brochure provided on the healthcare.gov website.

(f) A health carrier must request a signature on the written disclosure statement:

(1) at the time of initial coverage or enrollment; and

(2) any time a policyholder is enrolling in coverage under a different consumer choice plan from the plan for which the initial disclosure statement was signed, including instances where the health carrier discontinues a plan, consistent with Insurance Code §1202.051, concerning Renewability and Continuation of Individual Health Insurance Policies; Insurance Code §1271.307, concerning Renewability of Coverage: Individual Health Care Plans and Conversion Contracts; and Insurance Code §1501.109, concerning Refusal to Renew; Discontinuation of Coverage.

(g) Except as provided by subsection (e) of this section, when a health carrier provides the written disclosure statement referenced in subsection (a) of this section to a prospective policyholder or contract holder:

(1) through an agent, the agent may not transmit the application to the health carrier for consideration until the agent has secured the signed written disclosure statement from the applicant; and

(2) directly to the applicant, the health carrier may not process the application until the health carrier has secured the signed written disclosure statement from the applicant.

(h) The health carrier must, on request, provide the prospective or current policyholder or contract holder with a copy of the written disclosure statement free of charge.

(i) When a health carrier is offering or issuing a consumer choice health benefit plan to an association, the health carrier must satisfy the requirements of subsection (e) of this section by providing the written disclosure statement to prospective or existing certificate holders.

(j) A health carrier offering or issuing a consumer choice health benefit plan to a prospective or current policyholder, contract holder, or an association must update and file with the Commissioner, for approval, its written disclosure statement that conforms with this section no later than six months from the effective date of this section.

§21.3535. Retention of Disclosure.

(a) A health carrier must, for a period of five years after the date a consumer choice health benefit plan terminates:

(1) retain in the health carrier's records the signed disclosure statement required by §21.3530 of this title (relating to Health Carrier Disclosure); and

(2) on request from the department, provide copies of the retained documents to the department.

(b) A health carrier may accept receipt of a signed disclosure and written affirmation electronically, but the carrier remains responsible for compliance with subsection (a)(2) of this section.

(c) For renewals where a current policyholder or contract holder is not required to sign a disclosure statement, the health carrier may satisfy the requirements of subsection (a)(1) of this section by furnishing proof that the health carrier tendered the disclosure statement to the policyholder or contract holder in accordance with §21.3530(d)(2) of this title.

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 May 18, 2021.

TRD-202101971
James Person
General Counsel
Texas Department of Insurance
Effective date: June 7, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 676-6584

DIVISION 4. ADDITIONAL REQUIREMENTS

28 TAC §§21.3542 - 21.3544

STATUTORY AUTHORITY. The department adopts amendments to 28 TAC §§21.3542 - 21.3544 under Insurance Code §§36.001, 1507.006, 1507.007, and 1507.009.

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

Insurance Code §1507.006 requires health carriers providing standard health plans to provide a proposed policyholder or policyholder with certain written disclosures. The section also requires each applicant for initial coverage to sign the disclosure statement provided by the health carrier, and it requires the health carrier to retain the signed disclosure statement.

Insurance Code §1507.007 provides that a health carrier that offers one or more standard health plans under Chapter 1507 must also offer at least one accident or sickness insurance policy that provides state-mandated benefits and is otherwise authorized by the Insurance Code.

Insurance Code §1507.009 provides that the Commissioner adopt rules necessary to implement Chapter 1507.

§21.3544. Required Annual Reporting.

(a) Health carriers offering a consumer choice health benefit plan must file annually with the department a data certification, not later than June 1 of each year, on Form CCP 2, Consumer Choice Health Benefit Plans Data Certification. The data certification includes the following, each set out by plan type:

(1) the total number of consumer choice health benefit plans newly issued and renewed covering Texas lives;

(2) the total number of Texas lives (including members/employees, spouses, and dependents) covered under newly issued and renewed consumer choice health benefit plans;

(3) the gross premiums received for newly issued and renewed consumer choice health benefit plans covering Texas lives; and

(4) the average premium rate for consumer choice plans and state-mandated plans.

(b) For the purpose of subsection (a) of this section:

(1) for plans that are required to develop rates using the federal Unified Rate Review Template, the average premium rate is the average plan-adjusted index rate for each set of plans as submitted for the previous calendar year;

(2) for plans that are not required to develop rates using the federal Unified Rate Review Template, the average premium rate is the earned premium divided by the member months for each set of plans,

given per member per month, where member months is the number of people enrolled in a plan times the months of enrollment.

(c) Form CCP 2 is available on the department's website at www.tdi.texas.gov.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 18, 2021.

TRD-202101973
James Person
General Counsel
Texas Department of Insurance
Effective date: June 7, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 676-6584

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 707. CHILD PROTECTIVE INVESTIGATIONS

SUBCHAPTER C. CHILD CARE INVESTIGATIONS

DIVISION 3. NOTIFICATION

40 TAC §707.745

The Department of Family and Protective Services (DFPS) adopts amendments to §§707.745, 707.765, 707.825, and 707.857 in Chapter 707, concerning Child Protective Investigations. Section 707.765 is adopted with changes to the proposed text as published in the October 16, 2020, issue of the *Texas Register* (45 TexReg 7404) and will be republished. Sections 707.745, 707.825, and 707.857 are adopted without changes to the proposed text and will not be republished. The edit to §707.765 does not change the nature or scope of the rule nor does it create any new duties or powers or affect new persons or entities, other than those already given notice. Rather the change more directly reflects what is already permitted under the rule. Accordingly, the rules will not be re-proposed.

BACKGROUND AND JUSTIFICATION

The purpose of the rule changes is to reflect notification requirements of investigation findings to a residential child care operation after the completion of a child abuse, neglect, or exploitation investigation involving the operation's staff.

COMMENTS

The 30-day comment period ended November 15, 2020. During this period, DFPS received comments from Disability Rights Texas. A summary of the comments and DFPS's response follows:

Comment: Disability Rights Texas requested the addition of language to §§707.745, 707.765(15), 707.825, and 707.857 requiring DFPS to make available case records (which includes investigative reports and the supporting evidence including videotapes, audiotapes, and photographs) to the protection and advocacy system if the system represents the victim or alleged victim or is authorized by law to represent the victim or alleged victim.

Response: DFPS noted that state protection and advocacy systems, such as Disability Rights Texas, are already entitled to the records under current §707.765(a) which provides access to "any other person authorized by state or federal law to have a copy" of confidential investigation information. However, DFPS will update this rule to specifically reference a state protection and advocacy system, such as Disability Rights Texas as an entity entitled to such information. DFPS does not believe it is necessary to also update §§707.745, 707.825, and 707.857 because §707.765 is the rule that specifically addresses which entities are entitled to obtain confidential investigation records while §§ 707.745, 707.825, and 707.857 concern DFPS's notification duties of investigation findings after completion of an investigation or after an investigation finding is changed pursuant to an appeal.

STATUTORY AUTHORITY

The amended section is adopted under Human Resources Code (HRC) §40.027, which provides that the DFPS commissioner shall adopt rules for the operation and provision of services by the department.

The amended section implements the Child Abuse Prevention and Treatment Act and Texas Human Resources Code §40.006.

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 May 21, 2021.

TRD-202102054
Tiffany Roper
General Counsel
Department of Family and Protective Services
Effective date: June 10, 2021
Proposal publication date: October 16, 2020
For further information, please call: (512) 438-3397

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DIVISION 4. CONFIDENTIALITY

40 TAC §707.765

The amended section is adopted under Human Resources Code (HRC) §40.027, which provides that the DFPS commissioner shall adopt rules for the operation and provision of services by the department.

The amended section implements the Child Abuse Prevention and Treatment Act and Texas Human Resources Code §40.006.

§707.765. Who may obtain confidential abuse, neglect, and exploitation investigation information from the Child Care Investigation's file made confidential under the federal Child Abuse Prevention and Treatment Act and Texas Human Resources Code (HRC) §§40.005 and 42.004?

(a) The following may obtain confidential abuse, neglect, and exploitation investigation information from us subject to the limitations described in §707.767 (relating to Are there any portions of the abuse, neglect, or exploitation investigation records that may not be released

to anyone?) and §707.769 (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in the abuse, neglect, or exploitation investigation records maintained by us?) in this division:

(1) Texas Department of Family and Protective Services (DFPS) staff, including volunteers, as necessary to perform their assigned duties;

(2) Child Care Licensing (CCL) pursuant to HRC §40.042(f), in order to carry out its regulatory functions under HRC Chapter 42;

(3) The parent of the child who is the subject of the investigation;

(4) An attorney ad litem, guardian ad litem, or court appointed special advocate of an alleged victim of child abuse, neglect, or exploitation;

(5) The alleged perpetrator, or the parent of an alleged perpetrator that is a minor;

(6) Law enforcement;

(7) A member of the state legislature when necessary to carry out that member's official duties;

(8) A residential child care operation;

(9) A child day care operation cited for a deficiency by CCL as a result of the investigation;

(10) A single-source continuum contractor (SSCC) for community-based care when:

(A) The SSCC subcontracts with the child care operation where the investigation occurred;

(B) The operation has signed a release of information; and

(C) CCL cited the operation for a deficiency as a result of the investigation;

(11) An administrative law judge who conducts a due process hearing related to a finding of abuse, neglect, or exploitation or related to an enforcement action taken by CCL or another state agency as a result of the finding. See division 7 of this subchapter (relating to Due Process Hearings);

(12) A judge of a court of competent jurisdiction in a criminal or civil case arising out of an investigation of child abuse, neglect, or exploitation, if the judge:

(A) provides notice to DFPS and any other interested parties;

(B) after reviewing the information, including audio and/or videotapes, determines that the disclosure is essential to the administration of justice and will not endanger the life or safety of any individual; and

(C) includes in the disclosure order any safeguards that the court finds appropriate to protect the interest of the child involved in the investigation;

(13) According to Texas Family Code (TFC) §162.0062, a prospective adoptive parent of a child who is the subject of the investigation or who is the alleged or designated perpetrator in the investigation;

(14) A child care licensing agency or child welfare agency from another state that requests information on the alleged perpetrator as part of a background check or to assist in its own child abuse, neglect, or exploitation investigation;

(15) A state protection and advocacy system, such as Disability Rights Texas, that is representing or is authorized by state or federal law to represent a child that is the subject of the investigation; and

(16) Any other person authorized by state or federal law to have a copy.

(b) Notwithstanding any other provision of this section, the parent of a child who is not the subject of the investigation or the alleged or designated perpetrator in the investigation but was a collateral witness during the investigation is entitled to the portion of the investigation record related to their child.

(c) A social study evaluator may obtain a complete, non-redacted copy of any investigative report regarding abuse, neglect, or exploitation that relates to any person residing in the residence subject to the child custody evaluation, as provided by TFC §107.111.

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 May 21, 2021.

TRD-202102055
Tiffany Roper
General Counsel
Department of Family and Protective Services
Effective date: June 10, 2021
Proposal publication date: October 16, 2020
For further information, please call: (512) 438-3397

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DIVISION 6. ADMINISTRATIVE REVIEWS

40 TAC §707.825

The amended section is adopted under Human Resources Code (HRC) §40.027, which provides that the DFPS commissioner shall adopt rules for the operation and provision of services by the department.

The amended section implements the Child Abuse Prevention and Treatment Act and Texas Human Resources Code §40.006.

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 May 21, 2021.

TRD-202102056
Tiffany Roper
General Counsel
Department of Family and Protective Services
Effective date: June 10, 2021
Proposal publication date: October 16, 2020
For further information, please call: (512) 438-3397

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DIVISION 7. DUE PROCESS HEARINGS

40 TAC §707.857

The amended section is adopted under Human Resources Code (HRC) §40.027, which provides that the DFPS commissioner shall adopt rules for the operation and provision of services by the department.

The amended section implements the Child Abuse Prevention and Treatment Act and Texas Human Resources Code §40.006.

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 May 21, 2021.

TRD-202102057
Tiffany Roper
General Counsel
Department of Family and Protective Services
Effective date: June 10, 2021
Proposal publication date: October 16, 2020
For further information, please call: (512) 438-3397


Texas

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) will review and consider whether to readopt, readopt with amendments, or repeal the rules in Title 1, Part 12, Texas Administrative Code, Chapter 253, *Practice and Procedure.* This review is conducted in accordance with Government Code §2001.039. Chapter 253 consists of the following rules:

§253.1: Petitions for Rulemaking before the Commission

§253.2: Competitive Sealed Bids or Proposals

§253.3: Protest Procedures

§253.4: Negotiated Rulemaking and Alternative Dispute Resolution

§253.5: Enhanced Contract and Performance Monitoring

CSEC has conducted a preliminary review of Chapter 253 and determined that the reasons for initially adopting the chapter continue to exist. Staff does not anticipate proposing substantive amendments to Chapter 253.

Comments or questions regarding this review may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942; by facsimile to (512) 305-6937; or by email to *csecinfo@csec.texas.gov.* (Please include "CSEC Chapter 253 Rule Review" in the subject line.)

Any proposed changes to a Chapter 253 rule will be published for comment in the "Proposed Rules" section of a subsequent issue of the *Texas Register,* in accordance with the requirements of the Administrative Procedures Act, Texas Government Code Chapter 2001. Any proposed changes will be open for public comment prior to being considered for adoption by CSEC.

TRD-202102021
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: May 19, 2021

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Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 101, Assessment, Subchapter AA, Commissioner's Rules Concerning the Participation of English Language Learners in State Assessments; Subchapter BB, Commissioner's Rules Concerning Grade Advancement and Accelerated Instruction; Subchapter CC, Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program; Subchapter DD, Commissioner's Rules Concerning Substitute Assessments for Graduation; Subchapter EE, Commissioner's Rules Concerning the Statewide Testing Calendar and UIL Participation; and Subchapter FF, Commissioner's Rules Concerning Diagnostic Assessment, pursuant to Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 101, Subchapters AA-FF, in the March 5, 2021 issue of the *Texas Register* (46 TexReg 1513).

Relating to the review of 19 TAC Chapter 101, Subchapters AA-FF, TEA finds that the reasons for adopting Subchapters AA-FF continue to exist and readopts the rules. TEA received no comments related to the review of Subchapters AA-FF. No changes are necessary as a result of the review.

This concludes the review of 19 TAC Chapter 101.

TRD-202102023
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: May 19, 2021

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The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter AA, Commissioner's Rules Concerning Financial Accountability; Subchapter BB, Commissioner's Rules Concerning Financial Exigency; and Subchapter CC, Commissioner's Rules Concerning Federal Fiscal Compliance and Reporting, pursuant to Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 109, Subchapters AA-CC, in the March 5, 2021 issue of the *Texas Register* (46 TexReg 1514).

Relating to the review of 19 TAC Chapter 109, Subchapter AA, TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rule. TEA received no comments related to the review of Subchapter AA. At a later date, TEA may propose revisions to Subchapter AA to include any changes that may result from the 87th Texas Legislature, 2021.

Relating to the review of 19 TAC Chapter 109, Subchapter BB, TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rule. TEA received no comments related to the review of Subchapter BB. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 109, Subchapter CC, TEA finds that the reasons for adopting Subchapter CC continue to exist and readopts the rules. TEA received no comments related to the review of Subchapter CC. Proposed amendments to §109.3001, Local Maintenance of Effort, and §109.3003, Indirect Cost Rates, were published in the April 2, 2021 issue of the *Texas Register* (46 TexReg 2142). The proposed amendments would modify the existing rules to reflect changes to federal statutes, regulations, non-regulatory guidance, and delegation agreements. No additional changes are necessary as a result of the review.

This concludes the review of 19 TAC Chapter 109.

TRD-202102024
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: May 19, 2021

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §30.1(a)

STATE BOARD OF EDUCATION
Petition for Adoption of a Rule

The Texas Government Code, §2001.021, provides that any interested person may petition an agency requesting the adoption of a rule.

The petition should be signed and submitted:

by mail to Rulemaking Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494; or

by using the email button at the bottom of this petition form or by emailing directly to *rules@tea.texas.gov*.

Name:

Affiliation/Organization (if applicable):

Address:

Email Address:

Telephone: Date:

Texas Government Code, §2001.021, specifies that an interested person must meet one of the following criteria. Please check all of the following that apply to you.

☐ resident of Texas

☐ business entity located in Texas

☐ governmental subdivision located in Texas

☐ public or private organization located in Texas that is not a state agency

Proposed rule text (indicate words to be added or deleted from the current text):

Statutory authority for the proposed rule action:

Why is this rule action necessary or desirable?

(If more space is required, attach additional sheets.)

_____

Petitioner's Signature
(Typing your name in the field above serves as your signature for the purposes of this petition.)

Click here to submit petition form

Figure: 26 TAC §749.930(a)

A caregiver who cares for children receiving:	Must complete the following number of annual training hours:
(1) Only child-care services, programmatic services, or treatment services for primary medical needs, or a combination of these services	10 hours
(2) Treatment services for emotional disorders, intellectual disabilities, or autism spectrum disorder	25 hours

Figure: 26 TAC §749.930(c)

Type of Training	Hours
(1) Emergency Behavior Intervention	(A) 4 hours for a caregiver who cares only for children receiving: (i) Child-care or programmatic services; or (ii) Treatment services for primary medical needs in addition to children receiving child-care or programmatic services. (B) No hours for a caregiver who cares exclusively for children receiving treatment services for primary medical needs. (C) 8 hours for a caregiver who cares for children receiving treatment services for emotional disorders, intellectual disabilities, or autism spectrum disorder.
(2) Trauma Informed Care	2 hours
(3) Normalcy	1 hour
(4) Administering Psychotropic Medication, if the caregiver administers psychotropic medication	No specified hours

Figure: 30 TAC §335.323(e)(1)

[Figure: 30 TAC §335.323(e)(1)]

Waste Reported (Tons)	Maximum Annual Fee
Less than 1 ton	No charge
from 1 – 25 [1 – 50] tons	$150 [$100]
Greater than 25 [50] tons	$6.00 [$2.00] per ton

Figure: 30 TAC §335.323(e)(2)

[Figure: 30 TAC §335.323(e)(2)]

Waste Reported (Tons)	**Maximum Annual Fee**
Less than 1 ton	No charge
From 1 – 50 [1 – 100] tons	$100 [$50]
Greater than 50 [100] tons	$2.00 [$.50] per ton

Figure: 30 TAC §335.325(j)(1)

[Figure: 30 TAC §335.325(j)(1)]

	Maximum Fee Noncommercial [Noncommercial]		Maximum Fee Commercial [Commercial]	
Disposition	In State	Imported	In State	Imported
Landfill	$21.75/ton [$15/ton]	$27.55/ton [$19/ton]	$40/ton [$30/ton]	$50/ton [$37.50/ton]
Land Treatment	$17.40/ton [$12/ton]	$21.75/ton [$15/ton]	$34.80/ton [$24/ton]	$43.50/ton [$30/ton]
Underground Injection	$13.05/dwt [$9/dwt]	$15.95/dwt [$11/dwt]	$26.10/dwt [$18/dwt]	$32.63/dwt [$22.50/dwt]
Incineration	$11.60/ton [$8/ton]	$14.50/ton [$10/ton]	$23.20/ton [$16/ton]	$29/ton [$20/ton]
Processing	$5.80/ton [$4/ton]	$7.25/ton [$5/ton]	$11.60/ton [$8/ton]	$14.50/ton [$10/ton]
Storage	$1.45/ton [$1/ton]	$1.45/ton [$1/ton]	$2.90/ton [$2/ton]	$2.90/ton [$2/ton]
Energy Recovery	$5.80/ton [$4/ton]	$5.80/ton [$4/ton]	$11.60/ton [$8/ton]	$11.60/ton [$8/ton]
Fuel Processing	$4.35/ton [$3/ton]	$4.35/ton [$3/ton]	$8.70/ton [$6/ton]	$8.70/ton [$6/ton]

Figure: 30 TAC §335.325(j)(2)

[Figure: 30 TAC §335.325(j)(2)]

	Maximum Fee Noncommercial [Noncommercial]		Maximum Fee Commercial [Commercial]	
Disposition	In State	Imported	In State	Imported
Landfill	N/A	N/A	$8.00/ton [$6/ton]	$10/ton [$7.50/ton]
Land Treatment	N/A	N/A	$6.96/ton [$4.80/ton]	$8.70/ton [$6/ton]
Underground Injection	N/A	N/A	$5.22/dwt [$3.60/dwt]	$6.53/dwt [$4.50/dwt]
Incineration	N/A	N/A	$4.64/ton [$3.20/ton]	$5.80/ton [$4/ton]

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

FY 22-23 Sexual Assault Services Program Grant RFA

Request for Applications (RFA) for the

Sexual Assault Services Program Grant

The Office of the Attorney General (OAG) is soliciting applications for the Sexual Assault Services Program Grant to utilize funds for preventing sexual assault or improving services for survivors and other individuals affected by sexual violence.

Applicable Funding Source for the Sexual Assault Services Program Grant:

The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: State Sexual Assault Coalition - a statewide nonprofit organization that has been identified as a state sexual assault coalition by a state or federal agency authorized to make that designation.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at *https://www.texasattorneygeneral.gov/divisions/grants.* Updates and other helpful reminders about the application process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account: Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. If an on-line account is not created, the Applicant will be unable to apply for funding. To create an on-line account, the Applicant must email the point of contact information to *Grants@oag.texas.gov* with the following information:

-- First Name

-- Last Name

-- Email Address (*It is highly recommended to use a generic organization email address if available*)

-- Organization Legal Name

Note: Applicants who created accounts during the Other Victim Assistance Grant (OVAG), Victim Coordinator and Liaison Grant (VCLG), and Sexual Assault Prevention and Crisis Services (SAPCS)-State grant application cycle are already registered in GOALS.

-- Registered Applicants should access their Grant Programs webpage (homepage) in GOALS and select the green View Grant Programs button. If the answers provided on the Eligibility questions matched to the Sexual Assault Services Program Grant, the application will be available to the Applicant.

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline and the manner and form established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum amount of funding for a coalition is $65,000 per fiscal year. The maximum amount of funding for a coalition is $1,524,468 per fiscal year.

Grant Period - Up to Two Years: The grant contract period (term) is up to two years from September 1, 2021 through August 31, 2023, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the Applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method. All grant decisions including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the OAG. The decisions made by the OAG are final and are not subject to appeal.

Grant Purpose Areas: Grant contracts awarded under this Application Kit may be used to carry out the purpose of Texas Government Code, Chapter 420, including standardizing the quality of services provided, preventing sexual assault, providing training and technical assistance to sexual assault programs, and improving services to survivors and other individuals affected by sexual violence.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of lobbying; indirect costs; fees to administer a subcontract; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other

products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact the Grants Administration Division at Grants@oag.texas.gov, or (512) 936-0792.

TRD-202102081
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: May 24, 2021

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Request for Applications (RFA) for the Domestic Violence High Risk Teams Grant Program

The Office of the Attorney General (OAG) is soliciting applications for the Domestic Violence High Risk Teams Grant Program to utilize funds for developing and providing statewide support for activities of Domestic Violence High Risk Teams in reducing or preventing incidents of domestic violence and providing domestic violence services to victims.

Applicable Funding Source for Domestic Violence High Risk Teams Grant Program:

The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: State Domestic Violence Coalition - a statewide nonprofit organization that has been identified as a domestic violence coalition by a state or federal agency authorized to make that designation.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at https://www.texasattorneygeneral.gov/divisions/grants. Updates and other helpful reminders about the application process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account: Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. *If an on-line account is not created, the Applicant will be unable to apply for funding.* To create an on-line account, the Applicant must email the point of contact information to Grants@oag.texas.gov with the following information:

-- First Name

-- Last Name

-- Email Address *(It is highly recommended to use a generic organization email address if available)*

-- Organization Legal Name

Note: Applicants who created accounts during the Other Victim Assistance Grant (OVAG), Victim Coordinator and Liaison Grant (VCLG), and Sexual Assault Prevention and Crisis Services (SAPCS)-State grant application cycle are already registered in GOALS.

-- Registered Applicants should access their Grant Programs webpage (homepage) in GOALS and select the green View Grant Programs button. If the answers provided on the Eligibility questions matched to the Domestic Violence High Risk Teams Grant Program, the application will be available to the Applicant.

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum amount of funding for all programs is $300,000 per fiscal year. The maximum amount for a program is $300,000 per fiscal year, with the specified amount being awarded to the identified subgrantees, as detailed in the application kit.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to two years from September 1, 2021 through August 31, 2023, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the Applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method. All grant decisions including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the OAG. The decisions made by the OAG are final and are not subject to appeal.

Grant Purpose Area: The purpose of the Domestic Violence High Risk Teams Grant Program is to develop and provide statewide support for activities of Domestic Violence High Risk Teams in reducing or preventing incidents of domestic violence and providing domestic violence services to victims. Approved purpose activities may include:

-- Identifying and contracting with sites in local communities that have the capacity to implement best practice models for high risk teams or expand existing Domestic Violence High Risk Teams;

-- Evaluating funded site results;

-- Identifying best practice models that may be implemented in other communities;

-- Providing technical assistance to communities interested in implementing Domestic Violence High Risk Teams;

-- Making recommendations to improve the implementation and/or the expansion of Domestic Violence High Risk Teams in Texas.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of lobbying; indirect costs; fees to administer a subcontract; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the

purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact the Grants Administration Division at Grants@oag.texas.gov, or (512) 936-0792.

TRD-202102025
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: May 20, 2021

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Brazos Valley Council of Governments

Public Notice

Workforce Solutions Brazos Valley

2021 Target Occupation List Update

The Workforce Solutions Brazos Valley Board seeks public comment on an update to the 2021 Target Occupations list for the time period of May 25, 2021 to June 25, 2021. The occupation of Certified Medical Assistant is being added. The Target Occupations list is used to provide Workforce Innovation Opportunity Act (WIOA) training for eligible customers to achieve self-sufficient wages. A copy of this occupation may be reviewed at the Center for Regional Services located at 3991 East 29th Street, Bryan, Texas 77802 between 8:00 a.m. to 5:00 p.m., Monday through Friday, from May 25, 2021 to June 25, 2021. The Public Notice is available for review at the website *www.bvjobs.org* or by request to Barbara Clemmons via email at *bclemmons@bvcog.org* or via phone at (979) 595-2801 ext. 2061. Comments about the Workforce Solutions Brazos Valley Workforce Board addition of Certified Medical Assistant to the Target Occupations List Ability can be emailed to *bclemmons@bvcog.org* by June 25, 2021.

Equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Deaf, hard-of-hearing, or speech-impaired customers may contact:

Relay Texas: (800) 735-2989 (TTY) and 711 (Voice).

TRD-202102100
Michael Parks
Executive Director
Brazos Valley Council of Governments
Filed: May 26, 2021

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Central Texas Council of Governments

Hazard Mitigation Plan Request for Proposals

The Central Texas Council of Governments (CTCOG) wishes to secure the services of a professional consultant to perform all aspects of application, management, preparation, project implementation, planning services and submission requirements associated with the approval of a Hazardous Mitigation planning grant and plan development to the Federal Emergency Management Agency (FEMA) through the Texas Division of Emergency Management. If the grant is approved, the consultant will develop the multi-jurisdictional hazard mitigation plan, which will address all-natural hazards that can affect this region. The plan will include Bell, Coryell, Milam, Hamilton, Lampasas, and Mills Counties and the incorporated cities within each of those counties.

A FEMA-approved hazard mitigation grant is required to develop the plan. The awarded consultant will have expertise in developing both Hazard Mitigation Assistance plans and grants. Payment of services will be dependent upon CTCOG being awarded a Mitigation Planning grant from the Texas Department of Emergency Management and FEMA.

The Request for Proposals (RFP) is available on the CTCOG website at https://ctcog.org/emergency-services/homeland-security/. The RFP describes detailed activities which need to be completed for a responsive submittal. Questions about the RFP may be sent to Jesse Hennage VIA email at jesse.hennage@ctcog.org. Questions regarding the RFP must be received by close of business June 10, 2021.

A copy of the project response must be received by CTCOG no later than 5:00 p.m. CST on June 15, 2021. Email submissions are preferred.

CTCOG reserves the right to accept or reject any or all bid/proposals received with this request, or to negotiate with all qualified vendors, or to cancel in part or in its entirety. CTCOG encourages entities that are certified; Historically, Underutilized Business, Disadvantaged Business Enterprise, and Minority Business Enterprise to request assistance and/or respond to all Request for Proposals.

TRD-202102033
Jesse Hennage
Emergency Service Program Manager
Central Texas Council of Governments
Filed: May 20, 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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/31/21 - 06/06/21 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 05/31/21 - 06/06/21 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202102094
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 25, 2021

♦ ♦ ♦

Deep East Texas Council of Government

Public Hearing Notification

Public Hearing - Proposed Annual PHA Plan - Regional Housing Authority

DETCOG Regional Housing Authority - Proposed Annual PHA Plan FYB 10-1-2021

Thursday, June 10, 2021, 10:00 a.m. - 11:00 a.m. (CDT)

Please join my meeting from your computer, tablet or smartphone.

https://global.gotomeeting.com/join/494629485

You can also dial in using your phone.

United States (Toll Free): 1 (866) 899-4679

United States: 1 (571) 317-3116

Access Code: 494-629-485

AGENDA

June 10, 2021

1) Call to Order

2) Review and receive public comment regarding proposed Annual PHA Plan

3) Other Items for Discussion

4) Adjournment

TRD-202102088
Lonnie Hunt
Executive Director
Deep East Texas Council of Governments
Filed: May 24, 2021

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 6, 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 July 6, 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: ALAMO CONCRETE PRODUCTS COMPANY; DOCKET NUMBER: 2020-1462-EAQ-E; IDENTIFIER: RN102222023; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: limestone quarry; RULES VIOLATED: 30 TAC §213.4(j)(6) and Edwards Aquifer Above Ground Storage Tank (AST) System Facility Plan Number 13-99030201A, Standard Conditions of Approval Number 3, by failing to obtain approval of a modification of an approved Edwards Aquifer AST System Facility Plan prior to initiating a regulated activity over the Edwards Aquifer Transition Zone; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: AMILA-1 INC dba Avas Chevron; DOCKET NUMBER: 2021-0067-PST-E; IDENTIFIER: RN101449973; LOCATION: Carrollton, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 756-3994; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Beck ReadyMix Concrete Company, LTD; DOCKET NUMBER: 2021-0071-AIR-E; IDENTIFIER: RN102595113; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §116.115(c), New Source Review Permit Number 695, Special Conditions Number 2, and Texas Health and Safety Code, §382.085(b), by failing to comply with the concrete production limit; PENALTY: $3,250; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8912; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: BRM Trucking & Construction, LLC; DOCKET NUMBER: 2021-0035-WQ-E; IDENTIFIER: RN111132965; LOCATION: Poteet, Atascosa County; TYPE OF FACILITY: residential development; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: City of Del Rio; DOCKET NUMBER: 2020-1605-PWS-E; IDENTIFIER: RN101264299; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(e) and §290.107(e), by failing to provide the results of nitrate and volatile organic chemical contaminants sampling to the executive director (ED) for the January 1, 2019 - December 31, 2019, monitoring period; 30 TAC §§290.106(e), 290.107(e), and 290.115(e), by failing to provide the results of synthetic organic chemical (SOC) contaminants (SOC Group 5 and methods 504, 515, and 531), metals, minerals, and Stage 2 Disinfection Byproducts sampling to the ED for the January 1, 2017 - December 31, 2019, monitoring period; and 30 TAC §290.108(e), by failing to provide the results of radionuclides sampling to the ED for the January 1, 2014 - December 31, 2019, monitoring period; PENALTY: $8,250; ENFORCEMENT COORDINATOR: Ecko Beggs, (915) 834-4968; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(6) COMPANY: City of Navasota; DOCKET NUMBER: 2020-0745-MWD-E; IDENTIFIER: RN101608131; LOCATION: Navasota, Grimes 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 WQ0010231001, Effluent Limitations and Monitoring Requirements

Number 1, by failing to comply with permitted effluent limitations; PENALTY: $24,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $19,500; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: DUKO OIL COMPANY, INCORPORATED; DOCKET NUMBER: 2021-0075-PST-E; IDENTIFIER: RN101804938; LOCATION: Emory, Rains County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Floresville Independent School District; DOCKET NUMBER: 2021-0027-PST-E; IDENTIFIER: RN101893659; LOCATION: Floresville, Wilson County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii) and §334.7(d)(1)(H) and (3), 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, and failing to provide written notice to the agency of any changes in the operational status of the UST system within 30 days from the date of the occurrence of the change or addition; and 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 USTs; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: HWY 2243 GROCERY, INCORPORATED dba Jiffy Mart 2; DOCKET NUMBER: 2021-0076-PST-E; IDENTIFIER: RN101499655; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.225 and Texas Health and Safety Code, §382.085(b), by failing to comply with annual Stage I vapor recovery testing requirements; PENALTY: $1,651; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(10) COMPANY: James Richard Jones, Jr. dba RJs Custom Containers; DOCKET NUMBER: 2021-0046-IHW-E; IDENTIFIER: RN111145892; LOCATION: Childress, Childress County; TYPE OF FACILITY: container retail and rental; RULE VIOLATED: 30 TAC §335.2(b), by failing to not cause, suffer, allow, or permit the disposal of industrial solid waste; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(11) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2021-0040-MWD-E; IDENTIFIER: RN102177458; LOCATION: Mabank, Henderson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §21.4 and TWC, §5.702, by failing to pay associated late fees for TCEQ Financial Administration Account Number 23000974; and 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013879001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $1,125; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: PAWLIK'S SUPER MARKET, INCORPORATED dba Pawlik Ace Mart; DOCKET NUMBER: 2021-0028-PST-E; IDENTIFIER: RN101434892; LOCATION: Pearsall, Frio County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.49(c)(2)(C) and (4)(C) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and system components are operating properly, and failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $7,780; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: PSA LLC dba Pops Quick Stop; DOCKET NUMBER: 2021-0061-PST-E; IDENTIFIER: RN102761608; LOCATION: Comanche, Comanche County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and §334.8(c)(4)(C), by failing to obtain a delivery certificate by submitting a properly completed underground storage tank (UST) registration and self-certification form within 30 days of the ownership change; 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 USTs; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(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; PENALTY: $7,497; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(14) COMPANY: R & T KELLEY, LLC. dba Kelly's Chevron; DOCKET NUMBER: 2021-0063-PST-E; IDENTIFIER: RN101433134; LOCATION: Pampa, Gray County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,562; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(15) COMPANY: Ricky Rockets Garland, Incorporated dba Ricky Rockets Store 104; DOCKET NUMBER: 2021-0106-PST-E; IDENTIFIER: RN109767657; LOCATION: Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.225 and Texas Health and Safety Code, §382.085(b), by failing to comply with annual Stage I vapor recovery testing requirements; PENALTY: $3,338; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Rivers Recycling LLC; DOCKET NUMBER: 2021-0079-WQ-E; IDENTIFIER: RN106103328; LOCATION: Kilgore, Gregg County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(17) COMPANY: SEA Eagle Ford, LLC; DOCKET NUMBER: 2020-1139-AIR-E; IDENTIFIER: RN107916439; LOCATION: Tilden, McMullen County; TYPE OF FACILITY: oil and gas manufacturing plant; RULES VIOLATED: 30 TAC §§122.121, 122.133(2), and 122.241(b) and Texas Health and Safety Code, §382.054 and §382.085(b), by failing to submit a permit renewal application at least six months prior to the expiration of a federal operating permit; PENALTY: $9,000; ENFORCEMENT COORDINATOR: Richard Garza, (512) 534-5859; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(18) COMPANY: TASO PROPERTY OWNER, LTD.; DOCKET NUMBER: 2021-0074-EAQ-E; IDENTIFIER: RN105628549; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §213.4(j) and Edwards Aquifer Protection Plan Number 13001199, Standard Conditions Numbers 6, by failing to obtain approval of a modification to an approved Water Pollution Abatement Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: TI AN, INCORPORATED dba Jr Food Mart 250; DOCKET NUMBER: 2021-0105-PST-E; IDENTIFIER: RN102937307; LOCATION: Daingerfield, Morris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $4,875; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 756-3994; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: TPC Group LLC; DOCKET NUMBER: 2020-1214-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(E)(i) and (c), and 122.143(4), New Source Review (NSR) Permit Numbers 19806, 22052, and 46426 and PSDTX999, Special Conditions (SC) Number 10.D, 16.C, and 37, Federal Operating Permit (FOP) Number O1598, 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 maintain records containing the information and data sufficient to demonstrate compliance with the permits; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Numbers 19806 and 46307, SC Numbers 1 and 2, FOP Number O1598, GTC and STC Number 25, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rate; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 19806, SC Numbers 9.A and 9.B, FOP Number O1598, GTC and STC Number 25, and THSC, §382.085(b), by failing to comply with the concentration limits; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1598, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $69,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $34,500; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202102089
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: May 25, 2021

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Enforcement Orders

An agreed order was adopted regarding Charles N. Wells, Trustee of RT Trust, Docket No. 2018-0963-MSW-E on May 25, 2021, assessing $1,125 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Peaceful Valley Donkey Rescue, Inc., Docket No. 2019-0079-MLM-E on May 25, 2021, assessing $6,562 in administrative penalties with $1,312 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAMACY, INC. dba Fernandes Food Mart, Docket No. 2019-1231-PST-E on May 25, 2021, assessing $6,885 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Benjamin Warms, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FGL GROUP, LLC dba Montgomery Manufacturing Co, Docket No. 2019-1649-IHW-E on May 25, 2021, assessing $5,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Fredericksburg, Docket No. 2019-1766-MSW-E on May 25, 2021, assessing $4,401 in administrative penalties with $880 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Union Carbide Corporation, Docket No. 2020-0062-IWD-E on May 25, 2021, assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WINDSOR WATER COMPANY, Docket No. 2020-0241-IHW-E on May 25, 2021, assessing $59 in administrative penalties with $11 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MAALT, L.P., Docket No. 2020-0365-AIR-E on May 25, 2021, assessing $1,188 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Paint Rock, Docket No. 2020-0653-IHW-E on May 25, 2021, assessing $437 in administrative penalties with $87 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LIFE SCIENCE PLAZA INVESTMENT GROUP, LP, Docket No. 2020-0698-PST-E on May 25,

2021, assessing $813 in administrative penalties with $162 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lazy River RV & Trailer Park, LLC, Docket No. 2020-0774-PWS-E on May 25, 2021, assessing $3,802 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Judy Bohr, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Leigh Water Supply Corporation, Docket No. 2020-1069-PWS-E on May 25, 2021, assessing $1,725 in administrative penalties with $345 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fort Bend County Municipal Utility District No. 152, Docket No. 2020-1159-MWD-E on May 25, 2021, assessing $1,063 in administrative penalties with $212 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PACCAR, INC. dba Peterbilt Motors Company, Docket No. 2020-1174-AIR-E on May 25, 2021, assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sandra R. Barbey dba Shelby Water, Docket No. 2020-1199-PWS-E on May 25, 2021, assessing $600 in administrative penalties with $120 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Bardwell, Docket No. 2020-1229-PWS-E on May 25, 2021, assessing $300 in administrative penalties with $60 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding San Patricio County Municipal Utility District No. 1, Docket No. 2020-1253-PWS-E on May 25, 2021, assessing $770 in administrative penalties with $154 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Snell Motor Company, Inc. dba Snell Collision Center, Docket No. 2020-1266-PST-E on May 25, 2021, assessing $2,481 in administrative penalties with $496 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Atkins, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Galveston County Municipal Utility District No. 12, Docket No. 2020-1365-MWD-E on May 25, 2021, assessing $1,437 in administrative penalties with $287 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Kyle Paul Construction LLC, Docket No. 2020-1366-MWD-E on May 25, 2021, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202102097
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 26, 2021

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Notice of Amendment Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant With Enhanced Controls: Proposed Air Quality Registration Number 143780

APPLICATION. BURNCO Texas LLC, 8505 Freeport Parkway, Suite 190, Irving, Texas 75063-2532 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 143780 to authorize a modification of a permanent concrete batch plant. The facility is proposed to be located at 11650 County Road 53, Celina, Collin County, Texas 75009. 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=33.292377&lng=-96.793864&zoom=13&type=r. This application was submitted to the TCEQ on May 6, 2021. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on May 10, 2021.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written com-

ments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Wednesday, July 7, 2021, at 6:00 p.m.

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 475-658-275. It is recommended that you join the webinar and register for the public hearing at least 15 minutes before the hearing begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the hearing for assistance in accessing the hearing and participating telephonically. Members of the public who wish to only listen to the hearing may call, toll free, (562) 247-8321 and enter access code 960-334-784.

Additional information will be available on the agency calendar of events at the following link: https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from BURNCO Texas LLC, 8505 Freeport Parkway, Suite 190, Irving, Texas 75063-2532, or by calling Mrs. Melissa Fitts, Vice President, Westward Environmental, Inc. at (830) 249-8284.

Notice Issuance Date: May 19, 2021

TRD-202102028
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 20, 2021

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Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 6, 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 July 6, 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: NICO-TYME WATER CO-OP, INC.; DOCKET NUMBER: 2019-1279-MLM-E; TCEQ ID NUMBER: RN101215788; LOCATION: 4749 Hardy Road near Elmendorf, Bexar County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(m)(4) and TCEQ Agreed Order (AO) Docket Number 2016-0384-PWS-E, Ordering Provision Number 2.a.i., by failing to maintain all water treatment units, storage, and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.41(c)(3)(K) and TCEQ AO Number 2016-0384-PWS-E, Ordering Provision Number 2.a.ii., by failing to provide a well casing vent with an opening that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.46(s)(1) and TCEQ AO Docket Number 2016-0384-PWS-E, Ordering Provision Number 2.a.iv., by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.121(a) and (b), and TCEQ AO Docket Number 2016-0384-PWS-E, Ordering Provision Number 2.a.v., by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(m)(1)(A) and TCEQ AO Docket Number 2016-0384-PWS-E, Ordering Provision Number 2.a.vi., by failing to inspect the facility's three ground storage tanks (GSTs) annually; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), (ii), and (iv), and (B)(v) and TCEQ AO Docket Number 2016-0384-PWS-E, Ordering Provision Number 2.a.vii., by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director

upon request; 30 TAC §290.46(e)(4)(A) and TCEQ AO Docket Number 2016-0384-PWS-E, Ordering Provision Number 2.a.viii., 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 groundwater license; 30 TAC §290.42(l) and TCEQ AO Docket Number 2016-0384-PWS-E, Ordering Provision Number 2.c.ii., by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference - specifically, the plant operations manual did not include emergency contact information and routine maintenance procedures; 30 TAC §290.46(i) and TCEQ AO Docket Number 2016-0384-PWS-E, Ordering Provision Number 2.e., by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter free chlorine throughout the distribution system at all times; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units , storage, and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.43(c)(4), by failing to provide GST Numbers 1 - 3 with a liquid level indicator; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of the facility's well; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 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; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.45(b)(1)(B)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; 30 TAC §290.45(b)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.110(d)(1), by failing to measure the free chlorine residual within the distribution system with a colorimeter, spectrophotometer, or a color comparator; 30 TAC §290.46(t) and TCEQ AO Docket Number 2016-PWS-E, Ordering Provision Number 2.c.i., by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility and an emergency telephone number where a responsible official can be contacted; TWC, §5.702 and 30 TAC §291.76, by failing to pay Regulatory Assessment Fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12984 for the 2017 and 2018 calendar years; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 90150486 for Fiscal Year 2019; and TWC, §11.1272(c) and 30 TAC §288.20(a) and §288.30(5)(B), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; PENALTY: $10,744; STAFF ATTORNEY: Ryan Rutledge, Litigation, MC 175, (512) 239-0630; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202102093

Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: May 25, 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 **July 6, 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 July 6, 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: Debbie Andrews; DOCKET NUMBER: 2020-0793-MSW-E; TCEQ ID NUMBER: RN106692643; LOCATION: 11067 United States Highway 67 South, San Angelo, Tom Green County; TYPE OF FACILITY: municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(a) and (c) and TCEQ AO Docket Number 2017-1623-MSW-E, Ordering Provision Numbers 2.b.i., ii., and iii. and c.ii. and iii., by causing, suffering, allowing or permitting the unauthorized disposal of MSW; PENALTY: $11,625; STAFF ATTORNEY: Judy Bohr, Litigation, MC 175, (512) 239-5807; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: Mashiana Corp. dba Lovely Food Mart; DOCKET NUMBER: 2020-0903-PST-E; TCEQ ID NUMBER: RN102240769; LOCATION: 704 East Byron Nelson Boulevard, Roanoke, Denton County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.77 and §334.78, by failing to initiate required abatement measure and submit a report to the TCEQ summarizing the initial abatement steps taken within 20 days after a release of a regulated substance from a UST system; PENALTY: $1,562; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Petro-Chemical Transport, LLC; DOCKET NUMBER: 2019-0992-PST-E; TCEQ ID NUMBER: RN101492114; LOCATION: 3707 Goodwin Avenue, Austin, Travis County; TYPE OF FACILITY: underground storage tank (UST) system and a fleet refueling facility; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system - specifically, the rectifier voltage meter for the corrosion protection impressed current system was nonoperational; PENALTY: $3,750; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation, MC 175, (512) 239-0620; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-292.

TRD-202102092
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: May 25, 2021

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Pamela Trahan: SOAH Docket No. 582-21-2061; TCEQ Docket No. 2020-0162-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 via Zoom videoconference at:

10:00 a.m. - June 24, 2021

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 497 1358

Password: PH2061

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

Meeting ID: 161 497 1358

Password: 775270

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed November 3, 2020, concerning assessing administrative penalties against and requiring certain actions of Pamela Trahan, for violations in Fayette County, Texas, of: 30 Texas Administrative Code §§334.7(d)(1)(A), (d)(1)(B), and (d)(3), and 334.47(a)(2).

The hearing will allow Pamela Trahan, 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 Pamela Trahan, 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 Pamela Trahan 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.** Pamela Trahan, 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 TAC 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 TAC §70.108 and §70.109 and ch. 80, and 1 TAC ch. 155.

Further information regarding this hearing may be obtained by contacting John S. Merculief II, 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: May 24, 2021

TRD-202102091
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 25, 2021

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 335

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, §335.323 and §335.325, under the requirements of Texas Health and Safety Code, Chapter 361 and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would provide for increases to the Industrial Hazardous Waste (IHW) generator fee schedule and the IHW management fee schedule.

Virtual Public Hearing

The commission will hold a *virtual* public hearing on this proposal on **June 29, 2021, at 10:00 a.m.** The virtual hearing is structured for the receipt of oral comments by interested persons. Individuals who register may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to and after the virtual hearing via the Teams Live Event Q&A chat function.

Persons who do not have internet access or who have special communication or other accommodation needs who are planning to participate in the virtual hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD) to register. Accommodation requests should be made as far in advance as possible.

Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments or want their attendance on record must **register by Friday, June 25, 2021.** To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on **June 28, 2021,** to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZGJmNjljZDQtYTM2ZC00NDVkLWE0MGMtNTA1ODNkODA3YTkx%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%220ab3b264-6a49-48c6-afc8-8225e4a7b0ac%22%2c%22IsBroadcastMeeting%22%3atrue%7d&btype=a&role=a

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2020-010-335-WS. **The comment period closes July 6, 2021.** Please choose only one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/prop.html.* For further information, please contact Garrett Heathman, Waste Permits Division, (512) 239-0520.

TRD-202102043
Robert Martinez
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 21, 2021

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Notice of Request for Public Comment and Notice of a Public Meeting on Draft 2022 Texas Nonpoint Source Management Program

The Texas Nonpoint Source Management Program (Management Program) is the State of Texas's comprehensive strategy to protect and restore water quality in waterbodies impacted by nonpoint sources of water pollution. The Management Program is required under federal Clean Water Act (CWA), §319(b). The Management Program is jointly administered by the Texas Commission on Environmental Quality (TCEQ) and the Texas State Soil and Water Conservation Board (TSSWCB). The state must have a federally approved Management Program in order to continue receiving federal CWA §319(h) grant monies from the United States Environmental Protection Agency (EPA). The Management Program is updated and revised every five years, and it was last updated and submitted to EPA in December 2017. TCEQ and TSSWCB request your review of and comments on the draft 2022 Management Program.

This draft document has been jointly developed by TCEQ and TSSWCB consistent with regulatory guidance to satisfy requirements of the federal CWA. The document incorporates EPA's eight components of an effective program; establishes long- and short-term goals for the program; provides for the coordination of nonpoint source-related programs and activities conducted by federal, state, regional, and local entities; and prioritizes assessment, planning, and implementation activities in priority watersheds and aquifers.

TCEQ and TSSWCB are requesting that, to the extent possible, comments reference the associated page, chapter, section, and paragraph from the document.

Public Meeting and Testimony. The public meeting for the draft document will be held **via a Microsoft Teams video conference on June 21, 2021, at 10:00 a.m.** To join the meeting, follow the link at ***https://tinyurl.com/49ut7faz.*** Please place your computer's microphone or telephone on **MUTE** so that background noise is not heard and turn your video **OFF.** The draft document is available online at the TCEQ Nonpoint Source Program website, *https://www.tceq.texas.gov/waterquality/nonpoint-source/mgmt-plan#draft-management-program-2022,* and the TSSWCB Nonpoint Source Program website, *https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program.*

Please periodically check *https://www.tceq.texas.gov/waterquality/nonpoint-source/mgmt-plan#draft-management-program-2022* before the meeting date for related updates.

During this meeting, individuals will have the opportunity to present oral statements. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all public comments have been received.

Written Comments. Please choose one of the methods provided to submit your written comments. Written comments on the draft Texas Nonpoint Source Management Program may be submitted to Faith Hambleton, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087; faxed to *fax4808@tceq.texas.gov;* or submitted electronically to ***https://www6.tceq.texas.gov/rules/ecomments/.*** **File size restrictions may apply to comments submitted via the eComments system.**

All written comments must be received at TCEQ by 11:59 p.m. on July 6, 2021, and should reference *Texas Nonpoint Source Management Program.*

After the public meeting and comment period, TCEQ and TSSWCB will address comments received and, if necessary, incorporate them into a final Management Program document that will be submitted to the TCEQ commissioners and TSSWCB board members for approval. Once the document is approved by both agencies, it will be submitted to the Texas Governor and EPA for their approval.

For further information regarding the Texas Nonpoint Source Management Program, please contact Faith Hambleton at *Faith.Hambleton@tceq.texas.gov.*

Persons with disabilities who have special communication or other accommodation needs who are planning to participate in the meeting should contact Faith Hambleton at *Faith.Hambleton@tceq.texas.gov.* Requests should be made as far in advance as possible.

TRD-202102040
Robert Martinez
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 21, 2021

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Notice of Water Quality Application

The following notices were issued on May 20, 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

The Texas Commission on Environmental Quality has initiated a minor amendment of the Texas Pollutant Discharge Elimination System Permit No. WQ0010401009 issued to City of Corpus Christi, 2726 Holly Road, Corpus Christi, Texas 78415, to authorize the correction of a typographical error to the type of bacteria limited on Page 2 of the existing permit. Specifically, the term *E. coli* has been replaced with Enterococci. No numerical values have been changed. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 13409 Whitecap Boulevard, in the City of Corpus Christi, Nueces County, Texas 78418.

INFORMATION SECTION

Walton Texas, LP has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0015323001 to authorize the addition of an Interim I and Interim II phase. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 420,000 gallons per day. The facility will be located approximately 1.4 miles southwest of the intersection of Rohde Road and State Highway 21, in Hays County, Texas 78640.

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-202102029
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 20, 2021

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Revised Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Proposed Permit No. 43019

Application. Oncore Healthcare Solutions, LLC, 2613 Skyway Drive, Grand Prairie, Texas 75052 has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40319, to construct and operate a Type V municipal solid waste medical waste processing facility. The proposed facility, OHS Telephone Rd, will be located approximately 5 miles southeast of downtown Houston. The facility is located approximately 1.1 miles due northwest of the intersection of I-610 and I-45 (Gulf Freeway) and approximately 0.7 miles north along Telephone Road from the intersection of I-610 (South Loop E Freeway) and Telephone Road (Exit 33) Zip Code 77087, in Harris County. The Applicant is requesting authorization to process, transfer, and store municipal solid waste that includes medical waste as defined in §326.3(23), trace chemotherapeutic waste, non-hazardous pharmaceutical waste, and other healthcare-related items that have come into contact with medical waste. The registration application is available for viewing and copying at the Flores Neighborhood Library, 110 North Milby Street, Houston, Texas 77003 and may be viewed online at https://www.gdsassociates.com/txprojects/. 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/11amD50. For exact location, refer to application.

The TCEQ executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

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 registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, 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.

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 registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, www.tceq.texas.gov/goto/pep. General information regarding the TCEQ can be found on our website at www.tceq.texas.gov/. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Oncore Healthcare Solutions, LLC at the address stated above or by calling Mason Bryant at (972) 786-7060, email at mason@oncoreus.com.

TRD-202102041
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 21, 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 May 17, 2021, to May 21, 2021. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, May 28, 2021. The public comment period for this project will close at 5:00 p.m. on Sunday, June 27, 2021.

FEDERAL AGENCY ACTIONS:

Applicant: Clear Creek Point, LP

Location: The project site is located in Clear Creek, at 350 North Wesley Drive, in League City, Galveston County, Texas.

Project Description: The applicant proposes to develop a marina that will result in the creation of 100 boat slips, attendant access roads, parking, and pedestrian boardwalks within an existing backwater of Clear Creek. The slips would be placed off 11,790-square-foot of floating docks located along five access gangways that are supported by 92 pilings installed within the marina basin. The gangways will be anchored on the shore of the basin above the high tide line (HTL) and behind soil erosion prevention bulkheads. Approximately 1,330 cubic yards (cy) of material will be mechanically and/or hydraulically dredged to deepen portions of the marina for placement of the docks as well as deepen the inlet from Clear Creek for vessel access. Dredged material will be placed in a designated upland placement area (PA).

For the construction of 2.18 acres of roads and parking areas, the applicant is proposing to permanently discharge fill material into 0.14 acres of palustrine (PEM) wetlands and temporarily discharge fill material into 0.05 acres of PEM wetlands to fulfil the project's purpose and need. Temporary impacts to wetlands would be restored to preconstruction contours and elevations once work has ceased in these areas.

Vehicle access to the marina will be from roadways with roadside parking that connect to the adjacent community. Three parking lots, including one boat trailer parking area, will branch from the main roadway for additional parking. Approximately 0.22 miles of 10-foot-wide wood planked boardwalks will be constructed over the existing bulkheads of the marina to allow for access between gangways, parking, and viewing areas.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2016-00658. 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: 21-1304-F2

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-202102099
Mark A. Havens
Chief Clerk
General Land Office
Filed: May 26, 2021

♦ ♦ ♦

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 May 5, 2021.

Facts

Based on an investigation conducted by Texas General Land Office-Region 2 staff on April 28,2021, the Commissioner of the General Land Office (GLO), has determined that a 48'Steel identified as GLO Vessel

Tracking Number 2-85323 is in a wrecked, derelict and substantially dismantled condition without the consent of the commissioner. The vessel is located in Dickinson Bay in Galveston County, TX.

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 PUBLIC HEATH, SAFETY, OR WELFARE and A THREAT TO NAVIGATION.

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 the person responsible for abandoning this vessel (GLO Tracking Number 2-85323) 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 call at (512) 463-2613.

TRD-202102098
Mark A. Havens
Chief Clerk
General Land Office
Filed: May 26, 2021

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Texas Department of Housing and Community Affairs

Request for Qualifications

The Texas Department of Housing and Community Affairs ("Department") has posted Request for Qualifications ("RFQ") #332-RFQ21-1001, for a law firm to serve as outside bond counsel for its single and multifamily bond programs. If you are interested in providing a response to this RFQ please view the Request for Qualifications posting on the *Electronic State Business Daily* ("ESBD"). The website is *http://esbd.cpa.state.tx.us/.* You can search by the RFQ number listed above. The RFQ is also posted on the Department's website *http://td-hca.state.tx.us.*

TRD-202102101
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 26, 2021

♦ ♦ ♦

Request for Qualifications

The Texas Department of Housing and Community Affairs ("Department") has posted Request for Qualifications ("RFQ") #332-RFQ21-1002, for a law firm to serve as outside bond counsel for its single and multifamily bond programs. If you are interested in providing a response to this RFQ please view the Request for Qualifications posting on the *Electronic State Business Daily* ("ESBD"). The website is *http://esbd.cpa.state.tx.us/.* You can search by the RFQ number listed above. The RFQ is also posted on the Department's website *http://td-hca.state.tx.us.*

TRD-202102102
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 26, 2021

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Request for Qualifications

The Texas Department of Housing and Community Affairs ("Department") has posted Request for Qualifications ("RFQ") #332-RFQ21-1003, for a law firm to serve as outside bond counsel for its single and multifamily bond programs. If you are interested in providing a response to this RFQ please view the Request for Qualifications posting on the *Electronic State Business Daily* ("ESBD"). The website is *http://esbd.cpa.state.tx.us/.* You can search by the RFQ number listed above. The RFQ is also posted on the Department's website *http://td-hca.state.tx.us.*

TRD-202102103
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 26, 2021

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Request for Qualifications

The Texas Department of Housing and Community Affairs ("Department") has posted Request for Qualifications ("RFQ") #332-RFQ21-1004, for a law firm to serve as outside bond counsel for its single and multifamily bond programs. If you are interested in providing a response to this RFQ please view the Request for Qualifications posting on the *Electronic State Business Daily* ("ESBD"). The website is *http://esbd.cpa.state.tx.us/.* You can search by the RFQ number listed above. The RFQ is also posted on the Department's website *http://td-hca.state.tx.us.*

TRD-202102104
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 26, 2021

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Texas Lottery Commission

Scratch Ticket Game Number 2348 "$50 OR $100"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2348 is "$50 OR $100". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2348 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2348.

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, MONEY BAG SYMBOL, STACK OF CASH SYMBOL, $50.00 and $100.

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. 2348 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR

25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
MONEY BAG SYMBOL	WIN$50
STACK OF CASH SYMBOL	WIN$100
$50.00	FFTY$
$100	ONHN

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2348), 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: 2348-0000001-001.

H. Pack - A Pack of the "$50 OR $100" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$50 OR $100" Scratch Ticket Game No. 2348.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "$50 OR $100" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-six (56) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "MONEY BAG" Play Symbol, the player wins $50 instantly! If the player reveals a "STACK OF CASH" Play Symbol, the player wins $100 instantly! 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 fifty-six (56) 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 fifty-six (56) 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 fifty-six (56) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-six (56) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: A Ticket may have up to fourteen (14) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

F. KEY NUMBER MATCH: The "MONEY BAG" (WIN$50) Play Symbol may appear up to two (2) times on intended winning Tickets, and will only appear with the $50 Prize Symbol, unless restricted by other parameters, play action or prize structure.

G. KEY NUMBER MATCH: The "STACK OF CASH" (WIN$100) Play Symbol will never appear more than one (1) time on intended winnning Tickets and will only appear with the $100 Prize Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "$50 OR $100" Scratch Ticket Game prize of $50.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 Scratch Ticket

Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "$50 OR $100" Scratch Ticket Game prize, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$50 OR $100" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$50 OR $100" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 11,040,000 Scratch Tickets in Scratch Ticket Game No. 2348. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2348 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$50.00	1,104,000	10.00
$100	220,800	50.00

*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 8.33. 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. 2348 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. 2348, 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-202102090
Bob Biard
General Counsel
Texas Lottery Commission
Filed: May 25, 2021

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Texas Board of Nursing

Solicitation Announcement for RFP No. 5070-21-001 for Texas Peer Assistance Program for Nurses (TPAPN) Services

This is an official notification that the Texas Board of Nursing, an agency of the State of Texas, has issued Request for Proposals No. 507-21-001 ("RFP") for Texas Peer Assistance Program for Nurses (TPAPN) services. Please promptly review the RFP posted on the Electronic State Business Daily ("ESBD") for general information regarding the solicitation and key deadlines applicable to respondents and responses. The posting can be viewed at http://www.txsmartbuy.com/esbddetails/view/507-21-001.

QUESTIONS MAY BE SUBMITTED TO:

April Liwanag, Assistant General Counsel

Texas Board of Nursing

333 Guadalupe, Suite 3-460

Austin, Texas 78701

Telephone: (512) 305-6823

Fax: (512) 305-8101

april.liwanag@bon.texas.gov

TRD-202102038
April Liwanag
Assistant General Counsel
Texas Board of Nursing
Filed: May 20, 2021

♦ ♦ ♦

Panhandle Regional Planning Commission

Region A Panhandle Water Planning Group - Public Notice of Pre-Planning Public Input Meeting

NOTICE OF MEETING

Region A Panhandle Water Planning Group

Tuesday, June 29, 2021, 9:30 a.m.

Panhandle Regional Planning Commission

415 SW 8th Ave., Amarillo, Texas 79101

Meeting may also be attended virtually via GoToMeeting:

https://global.gotomeeting.com/join/519013525

You may also dial in using your phone.

United States: +1 (571) 317-3112

Access Code: 519-013-525

The Region A Panhandle Water Planning Group (PWPG) will hold a Pre-Planning Public Input Meeting as part of their regularly scheduled meeting on June 29, 2021, at the Panhandle Regional Planning Commission, 415 SW 8th Ave. Amarillo, Texas 79101 beginning at 9:30 a.m. Interested participants may also attend online via GoToMeeting or utilize the call-in phone number (details above).

The PWPG was established by the Texas Water Development Board (TWDB) as one of sixteen Regional Water Planning Groups across the state following the 75th Texas Legislature's passage of Senate Bill 1

in 1997. The primary responsibility of the PWPG is the development of a Regional Water Plan on a five-year planning cycle that takes into consideration water availability, usage, conservation, and economic viability. Region A consists of 21 counties including: Armstrong, Carson, Childress, Collingsworth, Dallam, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, and Wheeler.

The purpose of the Pre-Planning Public Input Meeting is to provide background on the formation of the Regional Water Planning Groups and the water planning process with the primary goal of gathering suggestions as to issues, provisions, projects and strategies that should be considered in the development of the 2026 Regional Water Plan and 2027 State Water Plan.

The public will have an opportunity to provide written and oral comments during the Pre-Planning Public Input Meeting. Individuals may also submit written public comments for a period of 30-days prior to this meeting online at *www.PanhandleWater.org/public-comment.*

Notice of meeting and agenda are available for public review at *www.PanhandleWater.org* and in the County Clerk's office of each of the Region A Counties listed above. For more information please contact: Dustin Meyer, Local Government Services Director, P.O. Box 9257, Amarillo, Texas 79105; (806) 372-3381; *dmeyer@theprpc.org.*

TRD-202102039
Dustin Meyer
Local Government Services Director
Panhandle Regional Planning Commission
Filed: May 20, 2021

♦ ♦ ♦

Texas Department of Transportation

Notice of Virtual Public Meeting and Affording an Opportunity for Public Hearing - Atlanta District Department Policies Affecting Bicycle Use on the State Highway System

In accordance with Texas Administrative Code, Title 43, §25.55 (a) and (b), the Texas Department of Transportation (TxDOT) Atlanta District is hosting a 2021 Virtual Annual Bicycle Meeting and offering an opportunity for a virtual public hearing on district transportation projects, programs, and policies affecting bicycle use on the state highway system. The virtual public meeting will begin on **Tuesday, June 29, 2021** at **4:00 p.m. This is not a live event and the materials and presentations can be viewed any time beginning Tuesday, June 29, 2021 at 4:00 p.m. through Wednesday, July 14, 2021 at 11:59 p.m.** To log into the virtual public meeting, go to www.txdot.gov, search: 2021 Virtual Annual Bicycle Meeting. Pre-recorded video presentations will include both audio and visual components. Additional materials, including written transcripts of the presentations, exhibits and supporting documents will also be available.

The purpose of this virtual public meeting is to provide information regarding transportation projects and programs that might affect bicycle use on the state system within the Atlanta District. The nine counties within the Atlanta District include Bowie, Camp, Cass, Harrison, Marion, Morris, Panola, Titus, and Upshur. A presentation showing bicycle and pedestrian roadway accommodations will be shown during the virtual meeting, and you will have the chance to provide written comments by mail or email.

Comments from the public regarding the district transportation projects, programs, and policies affecting bicycle use on the state highway system are requested and can be submitted by email to Terri.McCasland@txdot.gov or by mail to **Texas Department of Transportation, Attention: Terri McCasland, 701 E. Main St., Atlanta, TX 75551.** All comments must be postmarked or otherwise received by **July 14, 2021,** to be included in the virtual public meeting summary report.

Any interested person may request that this meeting be formalized into a public hearing by submitting a written request to **Terri McCasland at 701 E. Main St., Atlanta, TX 75551,** on or before **Tuesday, June 22, 2021.** In the event such a request is received, the public meeting to be held Tuesday, June 29, 2021, will be rescheduled as a formal public hearing.

If you do not have internet access, have general questions regarding the 2021 Virtual Annual Bicycle Meeting, or would like to be added to the mailing list of interested bicyclists, bicycle organizations, or bicycle shops, please contact **Terri McCasland, Bicycle Coordinator for the Atlanta District, at (903) 799-1215.**

The 2021 Virtual Annual Bicycle Meeting will be conducted in English. If you need an interpreter or document translator because English is not your primary language or you have difficulty communicating effectively in English, one will be provided to you. If you have a disability and need assistance, special arrangements can be made to accommodate most needs. If you need interpretation or translation services or you are a person with a disability who requires an accommodation to attend and participate in the 2021 Virtual Annual Bicycle Meeting, please contact Terri McCasland, Atlanta District, at (903) 799-1215 no later than 4 p.m. CT, June 24, 2021. Please be aware that advance notice is required as some services and accommodations may require time for TxDOT to arrange.

TRD-202102058
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: May 21, 2021

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TEXAS

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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