TEXAS REGISTER

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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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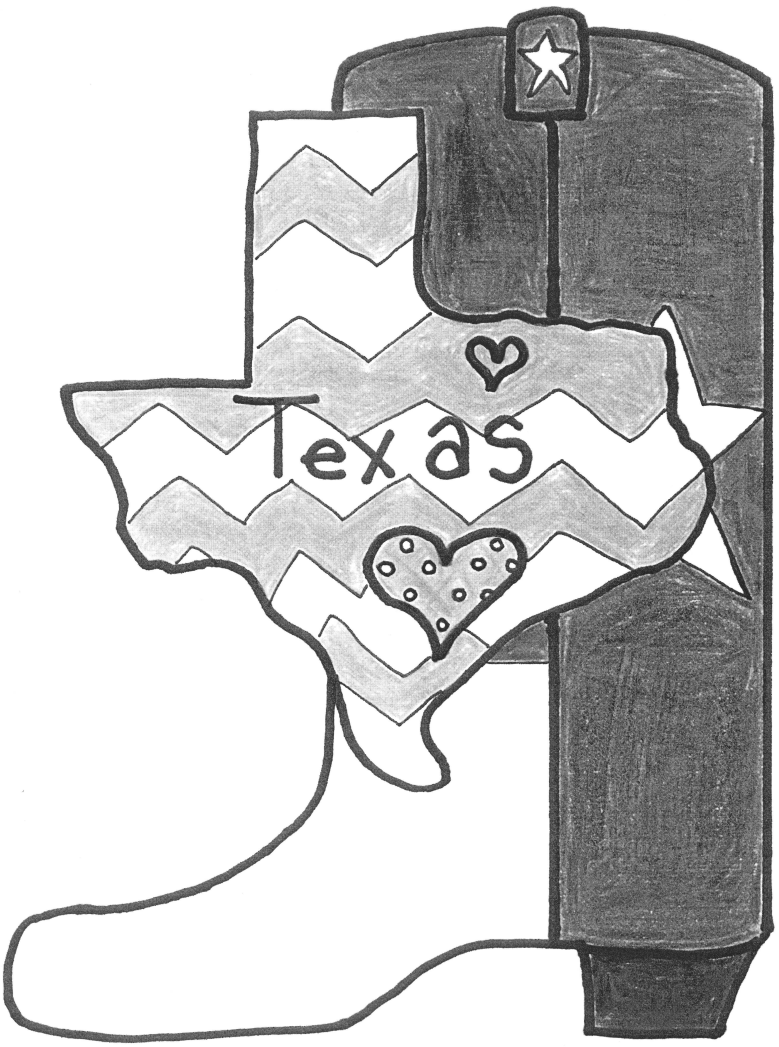
In This Issue


Texas

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.

Executive Order GA-37

Relating to the transportation of migrants during the COVID-19 disaster.

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

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, I issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 that the surge of individuals unlawfully crossing the Texas-Mexico border poses an ongoing and imminent threat of disaster for certain counties and agencies in the State of Texas, including the potential for the spread of COVID-19; and

WHEREAS, in each subsequent month effective through today, I have amended and renewed the border disaster declaration; and

WHEREAS, in a so-called "Title 42 order," President Trump took action to protect Americans from COVID-19 by rapidly expelling migrants who could carry the disease across the border; and

WHEREAS, the Biden Administration has kept in place the Title 42 order, and for good reason; and

WHEREAS, despite the emergence of the highly contagious delta variant of COVID-19, and the fact that vaccination rates are lower in the countries that newly admitted migrants come from and pass through, President Biden has thwarted the Title 42 order's effect by admitting into the United States and the State of Texas, migrants who are testing positive for COVID-19; and

WHEREAS, President Biden's failure to enforce the Title 42 order, combined with his refusal to enforce the immigration laws enacted by Congress, is having a predictable and potentially catastrophic effect on public health in Texas; and

WHEREAS, to take just one data point, reports show that U.S. Customs and Border Protection (CBP) has recently seen a 900 percent increase in the number of migrant detainees who tested positive for COVID-19 in the Rio Grande Valley; and

WHEREAS, busloads of migrants, an unknown number of whom are infected with COVID-19, are being transported to communities across the State of Texas, exposing Texans to the spread of COVID-19, as has already been reported in cities like La Joya, among others; and

WHEREAS, President Biden's refusal to enforce laws passed by the United States Congress cannot be allowed to compromise the health and safety of Texans by knowingly exposing them to COVID-19; and

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

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

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

WHEREAS, the admittance and movement of migrants under the Biden Administration is exposing Texans to COVID-19 and creating a public health disaster in Texas;

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

1. No person, other than a federal, state, or local law-enforcement official, shall provide ground transportation to a group of migrants who have been detained by CBP for crossing the border illegally or who would have been subject to expulsion under the Title 42 order.

2. The Texas Department of Public Safety (DPS) is directed to stop any vehicle upon reasonable suspicion of a violation of paragraph 1, and to reroute such a vehicle back to its point of origin or a port of entry if a violation is confirmed.

3. DPS is authorized to impound a vehicle that is being used to transport migrants in violation of paragraph 1, or that refuses to be rerouted in violation of paragraph 2.

This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor.

Given under my hand this the 28th day of July, 2021.

Greg Abbott, Governor

TRD-202102918

♦ ♦ ♦

Executive Order GA-38

Relating to the continued response to the COVID-19 disaster.

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

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, from March 2020 through May 2021, I issued a series of executive orders aimed at protecting the health and safety of Texans, ensuring uniformity throughout Texas, and achieving the least restrictive means of combatting the evolving threat to public health by adjusting social-distancing and other mitigation strategies; and

WHEREAS, combining into one executive order the requirements of several existing COVID-19 executive orders will further promote statewide uniformity and certainty; and

WHEREAS, as the COVID-19 pandemic continues, Texans are strongly encouraged as a matter of personal responsibility to consistently follow good hygiene, social-distancing, and other mitigation practices; and

WHEREAS, receiving a COVID-19 vaccine under an emergency use authorization is always voluntary in Texas and will never be mandated by the government, but it is strongly encouraged for those eligible to receive one; and

WHEREAS, state and local officials should continue to use every reasonable means to make the COVID-19 vaccine available for any eligible person who chooses to receive one; and

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

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

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

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

WHEREAS, under Section 418.173, the legislature authorized as "an offense," punishable by a fine up to $1,000, any "failure to comply with the [state emergency management plan] or with a rule, order, or ordinance adopted under the plan;"

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

1. To ensure the continued availability of timely information about COVID-19 testing and hospital bed capacity that is crucial to efforts to cope with the COVID-19 disaster, the following requirements apply:

a. All hospitals licensed under Chapter 241 of the Texas Health and Safety Code, and all Texas state-run hospitals, except for psychiatric hospitals, shall submit to the Texas Department of State Health Services (DSHS) daily reports of hospital bed capacity, in the manner prescribed by DSHS. DSHS shall promptly share this information with the Centers for Disease Control and Prevention (CDC).

b. Every public or private entity that is utilizing an FDA-approved test, including an emergency use authorization test, for human diagnostic purposes of COVID-19, shall submit to DSHS, as well as to the local health department, daily reports of all test results, both positive and negative. DSHS shall promptly share this information with the CDC.

2. To ensure that vaccines continue to be voluntary for all Texans and that Texans' private COVID-19-related health information continues to enjoy protection against compelled disclosure, in addition to new laws enacted by the legislature against socalled "vaccine passports," the following requirements apply:

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

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

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

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

e. This paragraph number 2 shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.

3. To ensure the ability of Texans to preserve livelihoods while protecting lives, the following requirements apply:

a. There are no COVID-19-related operating limits for any business or other establishment.

b. In areas where the COVID-19 transmission rate is high, individuals are encouraged to follow the safe practices they have already mastered, such as wearing face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household, but no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering.

c. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus.

d. Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow guidance from the Texas Health and Human Services Commission (HHSC) regarding visitations, and should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible.

e. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Edu-

cation Agency. Private schools and institutions of higher education are encouraged to establish similar standards.

f. County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations.

g. As stated above, business activities and legal proceedings are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials. This paragraph number 3 supersedes any conflicting local order in response to the COVID-19 disaster, and all relevant laws are suspended to the extent necessary to preclude any such inconsistent local orders. Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any conflicting or inconsistent limitation by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to $1,000.

4. To further ensure that no governmental entity can mandate masks, the following requirements shall continue to apply:

a. No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering; *provided, however, that:*

i. state supported living centers, government-owned hospitals, and government-operated hospitals may continue to use appropriate policies regarding the wearing of face coverings; and

ii. the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, and any county and municipal jails acting consistent with guidance by the Texas Commission on Jail Standards may continue to use appropriate policies regarding the wearing of face coverings.

b. This paragraph number 4 shall supersede any face-covering requirement imposed by any local governmental entity or official, except as explicitly provided in subparagraph number 4.a. To the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements, I hereby suspend the following:

i. Sections 418.1015(b) and 418.108 of the Texas Government Code;

ii. Chapter 81, Subchapter E of the Texas Health and Safety Code;

iii. Chapters 121, 122, and 341 of the Texas Health and Safety Code;

iv. Chapter 54 of the Texas Local Government Code; and

v. Any other statute invoked by any local governmental entity or official in support of a face-covering requirement.

Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any such face-covering requirement by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to $1,000.

c. Even though face coverings cannot be mandated by any governmental entity, that does not prevent individuals from wearing one if they choose.

5. To further ensure uniformity statewide:

a. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order or allows gatherings restricted by this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.

b. Confinement in jail is not an available penalty for violating this executive order. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes all pre-existing COVID-19-related executive orders and rescinds them in their entirety, except that it does not supersede or rescind Executive Orders GA-13 or GA-37. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.

Given under my hand this the 29th day of July, 2021.

Greg Abbott, Governor

TRD-202102978

♦ ♦ ♦

Proclamation 41-3850

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation on June 25, 2021, including to modify the list of affected counties and therefore declare a state of disaster for Brewster, Brooks, Crockett, Culberson, DeWitt, Dimmit, Edwards, Frio, Goliad, Gonzales, Hudspeth, Jeff Davis, Jim Hogg, Kimble, Kinney, La Salle, Lavaca, Live Oak, Maverick, McMullen, Midland, Pecos, Presidio, Real, Terrell, Uvalde, Val Verde, and Zapata counties, and for all state agencies affected by this disaster; and

WHEREAS, on June 30, 2021, I renewed that disaster proclamation, as amended, and also declared a state of disaster for Colorado, Crane, Galveston, Kenedy, Mason, Medina, and Throckmorton counties based on the same certified conditions; and

WHEREAS, on July 15, 2021, I amended the proclamation issued on June 30, 2021, to modify the list of affected counties to also declare a state of disaster for Bee, Jackson, Schleicher, Sutton, Webb, and Zavala counties based on the same certified conditions; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations; and

WHEREAS, communications with county officials have confirmed that the certified conditions now also pose an ongoing and imminent threat of disaster in Menard County;

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 for Menard County, and I do hereby renew the disaster proclamation, as amended and renewed, for Bee, Brewster, Brooks, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit,

Edwards, Frio, Galveston, Goliad, Gonzales, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Kenedy, Kimble, Kinney, La Salle, Lavaca, Live Oak, Mason, Maverick, McMullen, Medina, Midland, Pecos, Presidio, Real, Schleicher, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Webb, Zapata, and Zavala counties, and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed on June 25, June 30, and July 15, 2021, are in full force and effect.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 30th day of July, 2021.

Greg Abbott, Governor

TRD-202102991

♦ ♦ ♦

Proclamation 41-3851

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

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

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 30th day of July, 2021.

Greg Abbott, Governor

TRD-202102992

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THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0418-KP

Requestor:

The Honorable James White

Chair, House Committee on Homeland Security & Public Safety

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a legislator has a constitutional right to break quorum and whether Texas law allows for a determination that a legislator has vacated office (RQ-0418-KP)

Briefs requested by August 10, 2021

RQ-0419-KP

Requestor:

The Honorable Briscoe Cain

Chair, House Committee on Elections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Application of chapter 556 of the Government Code to the Texas Windstorm Insurance Association (RQ-0419-KP)

Briefs requested by September 1, 2021

RQ-0420-KP

Requestor:

The Honorable Matt Krause

Chair, House Committee on General Investigating

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: The meaning of specialty provider and other terms for purposes of implementing Senate Bill 1207 from the 86th Legislature (RQ-0420-KP)

Briefs requested by September 2, 2021

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

TRD-202103028
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: August 3, 2021

♦ ♦ ♦

Opinions

Opinion No. KP-0378

The Honorable Terry Canales

Chair, House Committee on Transportation

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether amendments to a contingent fee contract for legal services entered into before September 1, 2019, must comply with chapter 2254 of the Government Code

(RQ-0397-KP)

S U M M A R Y

House Bill 2826 from the Eighty-sixth Legislature amended subchapter C of chapter 2254 of the Government Code to add certain requirements to contingent fee contracts for legal services entered into on or after September 1, 2019. Senate Bill 1821 from the Eighty-seventh Legislature, effective on May 19, 2021, broadened the reach of those requirements by amending the definition of "contingent fee contract" in subchapter C to include amendments to contingent fee contracts under certain circumstances.

To the extent a contract amendment expands the scope of legal services to encompass a new legal matter, whether made before or after May 19, 2021, a court could find on particular facts that the amended contract is subject to chapter 2254 requirements regarding the governmental approval process, Attorney General approval, and a cap on fees. A contract amendment subject to chapter 2254 of the Government Code but failing to meet the law's requirements is void under subsection 2254.110.

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

TRD-202103027
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: August 3, 2021

♦ ♦ ♦

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

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 174. TELEMEDICINE

SUBCHAPTER A. TELEMEDICINE

22 TAC §174.5

The Texas Medical Board (Board) adopts, on an emergency basis, amendments to 22 TAC §174.5, effective July 31, 2021, at 12:01 a.m.

On March 13, 2020, the Governor of Texas certified COVID-19 as posing an imminent threat of disaster to the public health and safety and declared a state of disaster in all counties of Texas. The utilization of telemedicine to prescribe scheduled drugs for the treatment of chronic pain is needed to protect public health and curb the spread of COVID-19, while ensuring continuity of care for chronic pain patients and the avoidance of potential adverse consequences associated with the abrupt cessation of pain medicine. On June 30, 2021, the Board adopted, on an emergency basis, amendments to 22 TAC §174.5. Such rule is set to expire at 11:59 p.m. on July 30, 2021.

Therefore, the emergency amendment to §174.5(e) is immediately necessary to help the state's physicians, physician assistants and other health care professionals continue to mitigate the risk of exposure to COVID-19 and provide necessary medical services to related to issuance of prescriptions including controlled substances for patients. Pursuant to the Governor's declaration of disaster issued on March 13, 2020, related to COVID-19, physicians can continue the treatment of chronic pain with scheduled drugs for established patients after having an in-person or two-way audio and video communications telemedicine medical services within the last 90 days.

The emergency amendment would allow physicians to utilize telemedicine to continue issuing previous prescription(s) for scheduled medications to established chronic pain patients, if the physician has, within the past 90 days, seen a patient in-person or via a telemedicine visit using two-way audio and video communication.

Pursuant to Section 2001.034 and 2001.036(a)(2) of the Texas Government Code, the amendment is adopted on an emergency basis and with an expedited effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. The emergency amendment shall be in effect for only 75 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020 in response to the COVID-19 pandemic is in effect, whichever is shorter, pursuant to Section 2001.034 of the Texas Government Code.

The emergency rule amendments are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

Another statute affected by this rule is Chapter 111 of the Texas Occupations Code.

§174.5. Issuance of Prescriptions.

(a) The validity of a prescription issued as a result of a telemedicine medical service is determined by the same standards that would apply to the issuance of the prescription in an in-person setting.

(b) This rule does not limit the professional judgment, discretion or decision-making authority of a licensed practitioner. A licensed practitioner is expected to meet the standard of care and demonstrate professional practice standards and judgment, consistent with all applicable statutes and rules when issuing, dispensing, delivering, or administering a prescription medication as a result of a telemedicine medical service.

(c) A valid prescription must be:

(1) issued for a legitimate medical purpose by a practitioner as part of patient-practitioner relationship as set out in §111.005, of Texas Occupations Code; and

(2) meet all other applicable laws before prescribing, dispensing, delivering or administering a dangerous drug or controlled substance.

(d) Any prescription drug orders issued as the result of a telemedicine medical service, are subject to all regulations, limitations, and prohibitions set out in the federal and Texas Controlled Substances Act, Texas Dangerous Drug Act and any other applicable federal and state law.

(e) Limitation on Treatment of Chronic Pain. Chronic pain is a legitimate medical condition that needs to be treated but must be balanced with concerns over patient safety and the public health crisis involving overdose deaths. The Legislature has already put into place laws regarding the treatment of pain and requirements for registration and inspection of pain management clinics. Therefore, the Board has determined clear legislative intent exists for the limitation of chronic pain treatment through a telemedicine medical service.

(1) Treatment for Chronic Pain. For purposes of this rule, chronic pain has the same definition as used in §170.2(4) of this title (relating to Definitions).

(A) Telemedicine medical services used for the treatment of chronic pain with scheduled drugs by any means other than via audio and video two-way communication is prohibited, unless a patient:

(i) is an established chronic pain patient of the provider issuing the prescription;

(ii) is receiving a prescription that is identical to a prescription issued at the previous visit; and

(iii) has been seen by the prescribing physician or health professional defined under Chap 111.001(1) of Texas Occupations Code, in the last 90 days either:

(I) in-person; or

(II) via telemedicine using audio and video two-way communication.

(B) The emergency amendment of this rule effective July 31, 2021 at 12:01 A.M. shall be in effect for only 75 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020 in response to the COVID-19 pandemic is in effect, whichever is shorter.

(2) Treatment for Acute Pain. For purposes of this rule, acute pain has the same definition as used in §170.2(2) of this title. Telemedicine medical services may be used for the treatment of acute pain with scheduled drugs, unless otherwise prohibited under federal and state law.

~~[(A) Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless otherwise allowed under federal and state law.]~~

~~[(B) Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise prohibited under federal and state law.]~~

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 July 30, 2021.

TRD-202102993
Scott Freshour
General Counsel
Texas Medical Board
Effective date: July 31, 2021
Expiration date: October 13, 2021
For further information, please call: (512) 658-9691

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.24

Introduction. The Texas Board of Nursing (Board) adopts emergency amendments to §217.24(e), relating to *Telemedicine Medical Service Prescriptions,* pursuant to a finding of imminent peril to the public health, safety, and welfare, which requires adoption in fewer than thirty (30) days' notice, as authorized by Tex. Gov't. Code §2001.034.

Background.

On March 13, 2020, the Governor of the State of Texas certified COVID-19 as posing an imminent threat of disaster to the public health and safety and declared a state of disaster in all counties of Texas. On March 23, 2020, the Office of the Governor granted a waiver of 22 Texas Administrative Code §217.24(e), which prohibits an advanced practice registered nurse (APRN) from treating chronic pain with scheduled drugs through the use of telemedicine medical services, unless otherwise permitted under federal and state law. The waiver, however, expired on June 6, 2020.

The Board held a public meeting on June 8, 2020, to consider the adoption of an emergency rule to permit APRNs to treat chronic pain with scheduled drugs through the use of telemedicine medical services under certain conditions during the COVID-19 pandemic. At the conclusion of the meeting, the Board voted to adopt the emergency amendments to 22 Texas Administrative Code §217.24(e). The emergency amendments took effect June 8, 2020; were published in the *Texas Register* on June 19, 2020; and expired on July 7, 2020.

Because the continuation of the effects of the COVID-19 pandemic necessitated the continuation of an emergency rule beyond the July 7, 2020 expiration date, the Board held a public meeting on July 6, 2020, and again adopted emergency amendments to §217.24(e). The emergency amendments took effect July 7, 2020; were published in the *Texas Register* on July 17, 2020; and expired on September 4, 2020.

The Board again considered the need for the adoption of emergency amendments to §217.24(e) in a public meeting on September 4, 2020 and voted to adopt emergency amendments to §217.24(e) at the conclusion of that meeting. The emergency amendments took effect September 5, 2020; were published in the *Texas Register* on September 18, 2020; and expired on November 3, 2020.

The Board again considered the need for the adoption of emergency amendments to §217.24(e) in a public meeting on November 4, 2020, and voted to adopt emergency amendments to §217.24(e) at the conclusion of that meeting. The emergency amendments took effect November 4, 2020; were published in the *Texas Register* on November 20, 2020; and expired on January 3, 2021.

The Board again considered the need for the adoption of emergency amendments to §217.24(e) in a public meeting on December 30, 2020, and voted to adopt emergency amendments to §217.24(e) at the conclusion of that meeting. The emergency amendments took effect January 3, 2021; were published in the *Texas Register* on January 15, 2021; and expired on March 3, 2021.

Because the Board determined that the continuation of the effects of the COVID-19 pandemic necessitated the continuation of an emergency rule, the Board voted to adopt emergency amendments to §217.24(e) in a public meeting on February 25, 2021. The emergency amendments took effect March 4, 2021; were published in the *Texas Register* on March 12, 2021; and expired on May 2, 2021.

Because the Board determined that the continuation of the effects of the COVID-19 pandemic necessitated the continuation of an emergency rule, the Board voted to adopt emergency amendments to §217.24(e) in a public meeting on April 29, 2021. The emergency amendments took effect May 3, 2021; were published in the *Texas Register* on May 14, 2021; and expired on July 1, 2021.

Because the Board determined that the continuation of the effects of the COVID-19 pandemic necessitated the continuation of an emergency rule, the Board voted to adopt emergency amendments to §217.24(e) in a public meeting on June 30, 2021. The emergency amendments took effect July 2, 2021; were pub-

lished in the *Texas Register* on July 16, 2021; and will expire on July 31, 2021.

The Board has determined that the continuation of the effects of the COVID-19 pandemic necessitates the continuation of an emergency rule beyond the July 31, 2021, expiration date.

Reasoned Justification.

The adoption of emergency amendments to §217.24(e) is immediately necessary to allow APRNs to provide necessary treatment to established patients with chronic pain while mitigating the risk of exposure to COVID-19. Under the emergency amendments, the treatment of chronic pain with scheduled drugs through the use of telemedicine medical services by any means other than via audio and video two-way communication is prohibited, unless certain conditions are met. First, a patient must be an established chronic pain patient of the APRN. Second, the patient must be receiving a prescription that is identical to a prescription issued at the previous visit. Third, the patient must have been seen by the prescribing APRN or physician or health professional as defined in Tex. Occ. Code §111.001(1) in the last 90 days, either in-person or via telemedicine using audio and video two-way communication. These requirements are consistent with the rules adopted by the Texas Medical Board at 22 Texas Administrative Code §174.5 (relating to Issuance of Prescriptions) on an emergency basis and the provisions of federal law that currently permit the use of telemedicine medical services for the prescription of controlled substances during the COVID-19 pandemic.

Further, an APRN must exercise appropriate professional judgment in determining whether to utilize telemedicine medical services for the treatment of chronic pain with controlled substances. In order to ensure that telemedicine medical services are appropriate for the APRN to use, the emergency amendments require an APRN to give due consideration to factors that include, at a minimum, the date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID-19 risks. These are not the sole, exclusive, or exhaustive factors an APRN should consider under this rule. Further, the emergency amendments only apply to those APRNs whose delegating physicians permit them to issue refills for patients, and the refills are limited to controlled substances contained in Schedules III through V only. If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical services as permitted by this rule, the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit.

The remaining adopted changes make conforming changes to the definitions of the terms *acute pain* and *chronic pain,* consistent with the definition used by the Texas Medical Board, in 22 Texas Administrative Code §170.2(2) and (4) (relating to Definitions).

Statutory Authority. The emergency amendments are adopted under the authority of the Tex. Occ. Code §301.151, which authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing. The emergency amendments are also adopted pursuant to Tex. Gov't. Code §2001.034 and §2001.036(a)(2) on an emergency basis and with an expedited effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice.

This emergency adoption also affects Texas Occupations Code Chapter 111.

§217.24. Telemedicine Medical Service Prescriptions.

(a) - (d) (No change.)

(e) Limitation on Treatment of Chronic Pain. Chronic pain is a legitimate medical condition that needs to be treated, but must be balanced with concerns over patient safety and the public health crisis involving overdose deaths. The Legislature has already put into place laws regarding the treatment of pain and requirements for registration and inspection of pain management clinics. Therefore, the Board has determined clear legislative intent exists for the limitation of chronic pain treatment through a telemedicine medical service.

(1) For purposes of this rule, chronic pain has the same definition as used in 22 Texas Administrative Code §170.2(4) (relating to Definitions). [~~Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless otherwise allowed under federal and state law. For purposes of this section, "chronic pain" means a state in which pain persists beyond the usual course of an acute disease or healing of an injury. Chronic pain may be associated with a chronic pathological process that causes continuous or intermittent pain over months or years.~~]

(A) Telemedicine medical services used for the treatment of chronic pain with scheduled drugs by any means other than via audio and video two-way communication is prohibited, unless a patient:

(i) is an established chronic pain patient of the APRN;

(ii) is receiving a prescription that is identical to a prescription issued at the previous visit; and

(iii) has been seen by the prescribing APRN or physician or health professional as defined in Tex. Occ. Code §111.001(1) in the last 90 days, either:

(I) in-person; or

(II) via telemedicine using audio and video two-way communication.

(B) An APRN, when determining whether to utilize telemedicine medical services for the treatment of chronic pain with controlled substances as permitted by paragraph (1)(A) of this subsection, shall give due consideration to factors that include, at a minimum, the date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID risks. These are not the sole, exclusive, or exhaustive factors an APRN should consider under this rule.

(C) If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical services as permitted by paragraph (1)(A) of this subsection, the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit.

(2) For purposes of this rule, acute pain has the same definition as used in 22 Texas Administrative Code §170.2(2). Telemedicine medical services may be used for the treatment of acute pain with scheduled drugs, unless otherwise prohibited under federal and state law. [~~Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise prohibited under federal and state law. For purposes of this section, "acute pain" means the normal, predicted, physiological response to a stimulus, such~~

as ~~trauma, disease, and operative procedures. Acute pain is time limited.~~]

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 July 30, 2021.

TRD-202102990
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Effective date: August 1, 2021
Expiration date: November 28, 2021
For further information, please call: (512) 305-6822

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES

SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

25 TAC §97.7

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts on an emergency basis in Title 25 Texas Administrative Code, Chapter 97 Communicable Diseases, an amendment to §97.7, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19 among children returning to school. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. DSHS and HHSC accordingly find that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this amendment to §97.7.

To protect children returning to school and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule amendment to §97.7 to add the COVID-19 disease to the list of diseases requiring exclusion from schools and to provide readmission criteria. The purpose of this amendment is to identify COVID-19 as a disease that requires exclusion from school and to provide readmission criteria.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §81.004 and §81.042. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001. Texas Health and Safety Code §81.004 authorizes the Executive Commissioner of HHSC to adopt rules governing the effective implementation of Chapter 81, Communicable Diseases. Texas Health and Safety Code §81.042 authorizes the Executive Commissioner of HHSC to adopt rules governing school exclusion criteria regarding communicable disease.

The amendment implements Texas Government Code §531.0055, and Texas Health and Safety Code §81.004 and §81.042.

§97.7. Diseases Requiring Exclusion from Schools.

(a) The school administrator shall exclude from attendance any child having or suspected of having a communicable condition. Exclusion shall continue until the readmission criteria for the conditions are met. The conditions and readmission criteria are as follows:

(1) amebiasis--exclude until treatment is initiated;

(2) campylobacteriosis--exclude until after diarrhea free for 24 hours without the use of diarrhea suppressing medications and fever free for 24 hours without the use of fever suppressing medications;

(3) chickenpox--exclude until the lesions become dry, or if lesions are not vesicular, until 24 hours have passed with no new lesions occurring;

(4) common cold--exclude until fever free for 24 hours without the use of fever suppressing medications;

(5) conjunctivitis, bacterial and/or viral--exclude until permission and/or permit is issued by a physician or local health authority or until symptom free;

(6) coronavirus disease 2019--exclude and readmit based upon guidance from the Department of State Health Services on its website at https://dshs.texas.gov/covid19readmission;

(7) [~~(6)~~] fever--exclude until fever free for 24 hours without use of fever suppressing medications;

(8) [~~(7)~~] fifth disease (erythema infectiosum)--exclude until fever free for 24 hours without the use of fever suppressing medications;

(9) [~~(8)~~] gastroenteritis--exclude until diarrhea free for 24 hours without the use of diarrhea suppressing medications;

(10) [~~(9)~~] giardiasis--exclude until diarrhea free for 24 hours without the use of diarrhea suppressing medications;

(11) [~~(10)~~] hepatitis A--exclude until one week after onset of illness;

(12) [~~(11)~~] infections (wounds, skin, and soft tissue)--exclude until drainage from wounds or skin and soft tissue infections is contained and maintained in a clean dry bandage; restrict from situations that could result in the infected area becoming exposed, wet, soiled, or otherwise compromised;

(13) [~~(12)~~] infectious mononucleosis--exclude until physician decides or fever free for 24 hours without the use of fever suppressing medications;

(14) [~~(13)~~] influenza--exclude until fever free for 24 hours without the use of fever suppressing medications;

(15) [~~(14)~~] measles (rubeola)--exclude until four days after rash onset, or in the case of an outbreak, exclude unimmunized child for at least 21 days after the last date the unimmunized child was exposed;

(16) [~~(15)~~] meningitis, bacterial--exclude until 24 hours after start of effective treatment and approval by health care provider;

(17) [~~(16)~~] meningitis, viral--exclude until fever free for 24 hours without the use of fever suppressing medications;

(18) [~~(17)~~] meningococcal infections (invasive disease)--exclude until 24 hours after start of effective treatment and approval by health care provider;

(19) [~~(18)~~] mumps--exclude until five days after the onset of swelling;

(20) [~~(19)~~] pertussis (whooping cough)--exclude until completion of five days of appropriate antibiotic therapy, or until 21 days have passed since cough onset, whichever is earlier;

(21) [~~(20)~~] ringworm--none, if infected area can be completely covered by clothing or a bandage, otherwise exclude until treatment has begun;

(22) [~~(21)~~] rubella (German measles)--exclude until seven days after rash onset, or in the case of an outbreak, unimmunized children should be excluded until at least three weeks after the onset of the last rash;

(23) [~~(22)~~] salmonellosis--exclude until diarrhea free for 24 hours without the use of diarrhea suppressing medications and fever free for 24 hours without the use of fever suppressing medications;

(24) [~~(23)~~] scabies--exclude until treatment has begun;

(25) [~~(24)~~] shigellosis--exclude until diarrhea free for 24 hours without the use of diarrhea suppressing medications and fever free for 24 hours without the use of fever suppressing medications;

(26) [~~(25)~~] streptococcal sore throat and scarlet fever--exclude until 24 hours from time antibiotic treatment was begun and fever free for 24 hours without the use of fever suppressing medications;

(27) [~~(26)~~] tuberculosis disease (suspected or confirmed), pulmonary or laryngeal--exclude until antibiotic treatment has begun and a physician's certificate or health permit obtained; and

(28) [~~(27)~~] typhoid fever--exclude until diarrhea free for 24 hours without the use of diarrhea suppressing medications and fever free for 24 hours without the use of fever suppressing medications; and 3 consecutive stool specimens have tested negative for *Salmonella Typhi.*

(b) The school administrator shall exclude from attendance any child having or suspected of having a communicable disease designated by the Commissioner of the Department of State Health Services (commissioner) as cause for exclusion until one of the criteria listed in subsection (c) of this section is fulfilled.

(c) Any child excluded for reason of communicable disease may be readmitted, as determined by the health authority, by:

(1) submitting a certificate of the attending physician, advanced practice nurse, or physician assistant attesting that the child does not currently have signs or symptoms of a communicable disease or to the disease's non-communicability in a school setting;

(2) submitting a permit for readmission issued by a local health authority; or

(3) meeting readmission criteria as established by the commissioner.

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 July 30, 2021.

TRD-202102986
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: July 30, 2021
Expiration date: November 26, 2021
For further information, please call: (512) 776-7676

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

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

SUBCHAPTER K. EMERGENCY RULES FOR THE ICF/IID PROGRAM

26 TAC §261.352

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 261, Intermediate Care Facilities For Individuals With An Intellectual Disability Or Related Conditions (ICF/IID) Program--Contracting, new §261.352, concerning an emergency rule related to leave during the COVID-19 pandemic. As authorized by Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas.

In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of §261.352, Emergency Rule Related to Leave During the COVID-19 Pandemic.

To protect individuals enrolled in the ICF/IID Program and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to pay a program provider for reserving a bed in a facility for an individual who takes COVID-19 therapeutic leave to reduce the risk of COVID-19 transmission. The emergency rule sets forth the requirements that a program provider must meet to receive payment (sometimes referred to as a bed hold payment) for an individual's COVID-19 therapeutic leave. The emergency rule allows a program provider to request payment for COVID-19 therapeutic leave by making an attestation regarding its net profit, which was not allowed under 26 TAC §261.351, effective January 29, 2021.

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

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034, §531.0055, and §531.021, and Texas Human Resources Code §32.021. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Government Code §531.021, authorizes the Executive Commissioner of HHSC to adopt rules to administer federal funds and plan and direct the Medicaid program. Texas Human Resources Code §32.021 authorizes the Executive Commissioner of HHSC to adopt rules governing the proper and efficient operation of the Medicaid program.

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

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

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

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

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

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

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

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

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

(7) Net profit--Revenue minus expenses.

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

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

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

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

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

(13) Therapeutic leave--Leave described in §261.226(b) of this chapter.

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

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

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

(e) For a program provider to receive payment for COVID-19 therapeutic leave, the program provider must submit a completed HHSC bed hold payment attestation form, as described in subsection (f) or (g) of this section, and a request for payment for COVID-19 therapeutic leave to HHSC no later than 60 days after the effective date of this section. The program provider must submit the HHSC bed hold payment attestation form on or before the date the program provider submits the request for payment.

(f) By signing an HHSC bed hold payment attestation form that contains a revenue comparison, a program provider:

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

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

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

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

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

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

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

(ii) during an alternative pre-pandemic period authorized in writing by HHSC; and

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

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

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

(g) By signing an HHSC bed hold payment attestation form that contains a net profit comparison, a program provider:

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

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

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

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

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

(B) the program provider's net profit for one or more of the quarters described in the state plan amendment exceeded its net profit:

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

(ii) during an alternative pre-pandemic period authorized in writing by HHSC; and

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

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

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

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

(i) HHSC recoups payment made for COVID-19 therapeutic leave from a program provider if HHSC determines, based on a federal, state, or third-party review or audit, that:

(1) the program provider has not complied with this section;

(2) one or more of the circumstances described in subsection (f)(1) or (g)(1) of this section exists; or

(3) the program provider makes an attestation described in subsection (f)(2) or (g)(2) of this section that is inaccurate.

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

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

Filed with the Office of the Secretary of State on July 29, 2021.

TRD-202102965
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: July 30, 2021
Expiration date: November 26, 2021
For further information, please call: (512) 438-4287

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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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.727

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.727, concerning Add-on Payment Methodology for Home and Community-Based Services Supervised Living and Residential Support Services.

BACKGROUND AND PURPOSE

The purpose of the proposal is to extend the period in which add-on payments for Home and Community-based Services Waiver (HCS) Supervised Living and Residential Support Services (SL/RSS) are effective.

The proposal is necessary to comply with 2022-23 General Appropriations Act, Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC, Rider 30), which requires HHSC to maintain rate increases authorized by the 2020-21 General Appropriations Act, House Bill 1, 86th Legislature, Regular Session, 2019 (Article II, HHSC, Rider 44).

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.727(b) revises the last date in which HHSC will pay an add-on to the direct care portion of the SL/RSS rates from August 31, 2021, to August 31, 2023.

The proposed amendment to §355.727(c)(1) revises the period in which providers may be required to submit cost reports in addition to other reporting requirements. This proposed amendment corresponds with the date revision in the proposed change to subsection (b). The proposed amendment to §355.727(c)(1) also revises the name of HHSC Rate Analysis to reflect the new name of the department, which is the HHSC Provider Finance Department.

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, there will be an estimated additional cost to state government as a result of enforcing and administering the rule as proposed.

The effect on state government for each year of the first five years the proposed rule is in effect is an estimated cost of $5,983,315 in General Revenue (GR) ($16,149,299 in All Funds (AF)) in state fiscal year (SFY) 2022, $6,330,525 in GR ($16,149,299 in AF) in SFY 2023, $6,330,525 in GR ($16,149,299 in AF) in SFY 2024, $6,330,525 in GR ($16,149,299 in AF) in SFY 2025, and $6,330,525 in GR ($16,149,299 in AF) in SFY 2026.

Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of local government.

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 existing rules;

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

(8) HHSC has insufficient information to determine the proposed rule's effect on the state's economy.

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

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

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 does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public benefit will be additional funds for HCS providers of SL/RSS, which will enable HCS providers to maintain access to care in group home settings.

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 as it implements an extension to add-on payments for HCS providers of SL/RSS and, therefore, all costs to implement the proposal will be absorbed by HHSC.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to their 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 HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by email to PFD-LTSS@hhs.texas.gov.

To be considered, comments must be submitted no later than 21 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 Rules 21R147" 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 system; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Texas Government Code Chapter 531, and Texas Human Resources Code Chapter 32.

§355.727. Add-on Payment Methodology for Home and Community-Based Services Supervised Living and Residential Support Services.

(a) (No change.)

(b) Direct Care Staffing Add-on Payment Methodology. Effective January 1, 2020, through August 31, 2023 [~~August 31, 2021~~], HHSC will pay an add-on to the direct care portion of the Supervised Living and Residential Support Services rates.

(1) The add-on for each level of need (LON) is as follows:

(A) $4.06 per unit for LON 1;

(B) $4.53 per unit for LON 5;

(C) $5.22 per unit for LON 8;

(D) $6.04 per unit for LON 6; and

(E) $8.45 per unit for LON 9.

(2) The add-on is to be used only for attendant compensation as defined in §355.103(b)(1) of this chapter (relating to Specifications for Allowable and Unallowable Costs).

(c) Reporting requirements.

(1) All Home and Community-based Services (HCS) providers who deliver Supervised Living or Residential Support Services during the time period the add-on is in effect must comply with reporting requirements as described in §355.105(b) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures) for each reporting period during the time period the add-on is in effect. Providers may be required to submit cost reports in addition to other reporting requirements to include those days in which the add-on was in effect and [~~calendar years 2020 and 2021~~] not otherwise included in another report in which accountability has been determined. This report must be submitted for each component code if the provider requested participation individually or if the provider requested participation as a group. This report will be used as the basis for determining any recoupment amounts as described in subsection (f) of this section for the direct care staffing add-on reporting period. Participating providers failing to submit an acceptable Direct Care Staffing Compensation Report within 60 days of the date of the HHSC request for the report will be placed on vendor hold until such time as an acceptable report is received and processed by the HHSC Provider Finance Department [~~Rate Analysis~~].

(2) Providers who do not participate in attendant compensation rate enhancement and deliver no Supervised Living or Residential Support Services during the time period the add-on is in effect may be excused from submitting an accountability report for the years in which an HCS cost report is not required.

(d) - (g) (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 July 30, 2021.

TRD-202102968
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 424-6637

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SUBCHAPTER I. REPORTING

1 TAC §355.7201

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Texas Administrative Code, Title 1, Part 15, Chapter 355, new Subchapter I, §355.7201, concerning Novel Coronavirus (COVID-19) Fund Reporting.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with the 2022-23 General Appropriations Act, Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC, Rider 143) and S.B. 809, 87th Legislature, Regular Session, 2021.

The proposed new rule will outline definitions, reporting requirements, guidelines and procedures for health care institutions, as defined by Civil Practice and Remedies Code §74.001, including certain hospitals and nursing facilities, to report received federal COVID-19 funding. The COVID funding includes federal money received under the Coronavirus Aid, Relief, and Economic Security Act (15 U.S.C. §9001 et seq.), the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260), and the American Rescue Plan Act of 2021 (Pub. L. No. 117-2).

The proposed new rule outlines penalties for providers who fail to submit the required reports, in alignment with the provisions of S.B. 809 and Rider 143.

HHSC will compile and analyze the data and submit required legislative reports. S.B. 809 requires quarterly reports and Rider 143 requires HHSC to submit reports on December 1st and June 1st of each fiscal year. Appropriations in Strategy A.2.4, Nursing Facility Payments, for fiscal year 2023 are contingent on the submission of the reports due December 1, 2021 and June 1, 2022.

The required reporting for both the providers and HHSC is anticipated to terminate by September 1, 2023.

SECTION-BY-SECTION SUMMARY

Proposed new §355.7201(a) provides an introduction to the section and explains the requirement to collect and compile legislatively required reports pertaining to the COVID-19 federal funding.

Proposed new §355.7201(b) provides the applicable terms used in the section which includes "HHSC" and "health care institutions."

Proposed new §355.7201(c) lists the institutions that are required to submit the monthly reports to HHSC. This includes all institutions that are defined as a health care institution by Civil Practice and Remedies Code§74.001.

Proposed new §355.7201(d) describes the reporting requirements of health care institutions, which include moneys received under the Coronavirus Aid, Relief, and Economic Security Act (15 U.S.C. §9001 et seq.), the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260), and the American Rescue Plan Act of 2021 (Pub. L. No. 117-2).

Proposed new §355.7201(e) outlines the frequency of reporting for the health care institutions. This includes monthly reports with the initial report due by October 1, 2021. The language further provides that HHSC may grant providers an extension, upon their request.

Proposed new §355.7201(f) outlines when HHSC will submit HHSC's legislatively-mandated reports based on the compiled monthly reports submitted by the institutions.

Proposed new §355.7201(g) details the potential penalties for providers who fail to submit the required reports.

Proposed new §355.7201(h) details the duration of the reporting requirements, which ends on September 1, 2023, or as specified by HHSC.

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 do not have foreseeable implications relating to costs or revenues of state government.

Local governments that own or operate any of the facilities required to report federal COVID-19 funds could incur costs to report under the proposed rule. However, some providers may have already been required to submit this information to the federal government, which would reduce the overall cost they would incur to provide information already gathered to the state based on this proposal. HHSC will evaluate available federal reporting information and format to minimize duplication where possible. HHSC is unable to provide an estimate of the cost local governments would incur to provide required reports to HHSC.

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 create a new rule;

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

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

(8) HHSC has insufficient information to determine the proposed rule's effect on the state's economy.

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

Trey Wood has also determined that the proposal could have an adverse economic effect on small businesses, micro-businesses, and rural communities due to cost to comply pertaining to the monthly report submissions. However, some providers may have already been required to submit this information to the federal government, which would reduce the overall cost providers would incur to provide information they have already gathered to the state based on this proposal.

HHSC is unable to determine the number of small businesses, micro-businesses, and/or rural communities that are subject to the rule.

The proposed rule implements legislation that provides no alternatives to the rule proposed, and therefore the agency has no regulatory flexibility available or alternative methods of achieving the purpose of the proposed rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public benefit will be a better understanding of the type and amount of federal funds that have flowed to health care institutions during the COVID-19 public health emergency.

Trey Wood has also determined that for the first five years the rules are in effect, there could be anticipated economic costs to persons who are required to comply with the proposed rule. The proposed new rule will require health care institutions, as defined by Civil Practice and Remedies Code §74.001, to report on a monthly basis federal COVID-19 funds received. Providers may incur a cost to comply pertaining to the monthly report submission; however, HHSC anticipates it is likely that some providers may have already been required to submit this information to the federal government, which would reduce the overall cost providers would incur to provide information they have already gathered to the state based on this proposal.

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 HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by email to PFD-LTSS@hhs.texas.gov.

To be considered, comments must be submitted no later than 21 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 21R146" in the subject line.

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32; 2022-23 General Appropriations Act, S.B. 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC, Rider 143); and S.B. 809, 87th Legislature, Regular Session, 2021 (to be codified as new Chapter 81A in Texas Health and Safety Code, Subtitle D, Title 2), which requires HHSC to establish procedures for health care institutions to report required information.

The new section affects Texas Government Code Chapter 531; Texas Human Resources Code Chapter 32; 2022-23 General Appropriations Act, S.B. 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC, Rider 143); and S.B. 809, 87th Legislature, Regular Session, 2021 (to be codified as new Chapter 81A in Texas Health and Safety Code, Subtitle D, Title 2).

§355.7201. Novel Coronavirus (COVID-19) Fund Reporting.

(a) Introduction. The Texas Health and Human Services Commission (HHSC) collects monthly reports from health care institutions to compile legislatively-mandated reports. This section outlines the reporting requirements related to novel coronavirus (COVID-19) federal fund reporting. This section also describes the circumstances in which penalities and recoupments will be necessary for certain provider types for failure to submit required monthly reports.

(b) Definitions. Unless the context clearly indicates otherwise, the following words and terms when used in this section are defined as follows.

(1) Health care institution--As defined by Civil Practice and Remedies Code §74.001.

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

(c) Institutions required to complete monthly reports. Health care institutions that are required to submit monthly reports include:

(1) an ambulatory surgical center;

(2) an assisted living facility licensed under Texas Health and Safety Code Chapter 247;

(3) an emergency medical services provider;

(4) a health services district created under Texas Health and Safety Code Chapter 287;

(5) a home and community support services agency;

(6) a hospice;

(7) a hospital;

(8) a hospital system;

(9) an intermediate care facility for the mentally retarded or a home and community-based services waiver program for persons with mental retardation adopted in accordance with the Social Security Act §1915(c) (42 U.S.C. §1396n), as amended;

(10) a nursing home; and

(11) an end stage renal disease facility licensed under Texas Health and Safety Code §251.011.

(d) Reporting requirements. A health care institution is required to report on moneys received under the Coronavirus Aid, Relief, and Economic Security Act (15 U.S.C. §9001 et seq.), the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260), and the American Rescue Plan Act of 2021 (Pub. L. No. 117-2). HHSC may also request additional information related to direct or indirect costs associated with COVID that have impacted the provider's business operation and any other information HHSC deems necessary to appropriately contextualize the moneys received as described in this subsection. HHSC will collect information and the requested data may vary by provider type based on legislative direction.

(e) Frequency of reporting.

(1) Submission of data will be required on a monthly basis.

(2) Initial reporting will begin on September 1, 2021, and is due by October 1, 2021. The initial reporting period will be for January 31, 2020, through August 31, 2021. HHSC may choose to grant the

provider an extension of up to 15 calendar days if the provider notifies HHSC that additional time is required to submit the initial report prior to the due date.

(3) Subsequent monthly reports will be due by the first day of each month and will cover the time-period two months prior. For example, the report due November 1, 2021, will cover September 1, 2021 through September 30, 2021. HHSC may grant the provider an extension of no more than 15 calendar days if the provider notifies HHSC that more time is needed prior to the due date.

(f) HHSC legislatively-mandated reports. HHSC will compile reports based on submitted data and submit the reports on a quarterly basis to the Governor, Legislative Budget Board, and any appropriate standing committee in the Legislature. Quarterly reports will be submitted beginning December 1, 2021, and continue March 1, June 1, and September 1 thereafter. Upon conclusion of the PHE, the submission frequency may be reduced to semi-annually on December 1 and June 1 of each fiscal year.

(g) Penalties for failure to report. Specified providers are required to report information as requested on a monthly basis to HHSC.

(1) A facility that does not report requested information will be identified by name and a unique identifying number, such as National Provider Identification number, in HHSC's legislatively-mandated reports.

(2) Failure to report 2 or more times in a 12-month period will result in notification to the appropriate licensing authority who may take disciplinary action against a health care institution that violates this chapter as if the institution violated an applicable licensing law.

(3) Failure to report will result in the issuance of a vendor hold on future payments to the identified provider after 30 days following the due date of the required report. The vendor hold will be released after the provider has submitted all delinquent reports to HHSC.

(4) Appropriations in 2022-23 General Appropriations Act, Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC) Strategy A.2.4, Nursing Facility Payments, for fiscal year 2023 are contingent on the submission of the reports due December 1, 2021, and June 1, 2022. If HHSC is unable to utilize appropriations for nursing facilities from Strategy A.2.4 as a result of insufficient reporting from providers, HHSC will suspend all payments to providers until such a time as HHSC is authorized to continue making expenditures under Strategy A.2.4.

(h) Duration. This reporting requirement ends on August 31, 2023 or as specified by HHSC.

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 July 30, 2021.

TRD-202102982
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 424-6637

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SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8061

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8061, concerning Outpatient Hospital Reimbursement.

BACKGROUND AND PURPOSE

The purpose of the amendment is to comply with Senate Bill (S.B.) 1 , Article II, HHSC, Rider 8(f), 87th Legislature, Regular Session 2021, and to make other amendments to enhance clarity, consistency, and specificity. HHSC is required by S.B. 1 to allocate certain funds appropriated to provide an increase to outpatient reimbursement rates for rural hospitals. HHSC proposes an increase to outpatient services reimbursement by removing the cap that was established September 1, 2013, and applying a percentage increase to the cost to charge ratios for rural hospitals.

The proposed amendment will also eliminate the cost settlement of payments to maintain the level of payment directed by the rider. Rider 8 states that reimbursement for outpatient emergency department services which do not qualify as emergency visits may not exceed 65 percent of cost. Therefore, HHSC proposes a decrease in the allowable charges to 55 percent for these services to accommodate the increase in cost to charge ratios and retain the payments below 65 percent of cost.

Pursuant to S.B. 170, 86th Legislature, Regular Session, 2019 and S.B. 1621, 86th Legislature, Regular Session, 2019, HHSC's managed care contracts require managed care organizations to reimburse rural hospitals using a minimum fee schedule for services delivered through the Medicaid managed care program. The proposed amendment adds subsection (e), requiring a Medicaid minimum fee schedule for all rural hospitals, to conform the rule to the current law as well.

In addition, HHSC proposes to explain the cost to charge ratio (CCR) rate setting process by including a section specific to rural hospitals.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8061(a) adds two clarifying edits.

The proposed amendment to §355.8061(b)(2) adds "non-rural" to be specific about the outpatient interim rate determination for non-rural hospitals and the "default" interim rate.

Proposed new paragraph §355.8061(b)(3) specifies the outpatient interim rate determination and claim reimbursement for rural hospitals. New subparagraph (D) eliminates cost settlement of outpatient services for rural hospitals.

Proposed new subsection §355.8061 creates new subsection (e) to clarify the minimum fee schedule requirement for Managed Care Organizations.

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, there will be a fiscal impact to the state of a cost of $12,001,619 General Revenue (GR) ($32,393,035 All Funds (AF) for State Fiscal Year (SFY) 2022, and $13,002,823 GR ($33,170,468 AF) each year for SFY 2023 through SFY 2026.

For each year of the first five years that the rule will be in effect, enforcing or administering the rule has implications relating to revenues of local governments. The effect is projected to be a net increase to revenues of local governments of approximately $5,087,125 GR ($13,730,432 AF) for SFY 2022, and $5,382,330 GR, ($13,730,433 AF) each year for SFY 2023 - SFY 2026.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will 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 or micro-businesses. This rule amendment increases funding for rural hospitals and there are no hospitals in Texas receiving Medicaid that are small businesses or micro-businesses.

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 does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public benefit will be an increase to outpatient rates for rural hospitals, therefore paying the hospitals more closely to the cost of providing Medicaid outpatient services. An additional benefit includes clarification of language specific to the outpatient interim rate determination for non-rural and rural hospitals.

Trey Wood, Chief Financial Officer, 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. There is no requirement to alter current business practices and no new fees or costs imposed on those required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing to receive comments on the proposal will be held by HHSC through a webinar. The meeting date and time will be posted on the HHSC Communications and Events website at: https://hhs.texas.gov/about-hhs/communications-events and the HHSC Provider Finance Hospitals website at: https://pfd.hhs.texas.gov/provider-finance-communications.

Please contact Valerie Lesak at PFD_Hospitals@hhsc.state.tx.us if you have questions.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Valerie Lesak in the HHSC Provider Finance for Hospitals department at PFD_Hospitals@hhsc.state.tx.us.

Written comments on the proposal may be submitted to the HHSC Provider Finance Department, North Austin Complex, 4601 Guadalupe St, Austin, Texas 78751 (Mail Code H-400); P.O. Box 149030, Austin, Texas 78714-9030 (Mail Code H-400); by fax to (512)-730-7475; or by email to PFD_Hospitals@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 21R141" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32; and Texas Government Code §531.02194, which requires adoption of a prospective reimbursement methodology for the payment of rural hospitals.

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

§355.8061. Outpatient Hospital Reimbursement.

(a) Introduction. The Texas Health and Human Services Commission (HHSC), or its designee, reimburses outpatient hospital services under the reimbursement methodology described in this section. Except as described in subsections (c) and (d) of this section, HHSC will reimburse for outpatient hospital services based on a percentage of allowable charges and an outpatient interim rate.

(b) Interim reimbursement.

(1) HHSC will determine a percentage of allowable charges, which are charges for covered Medicaid services determined through claims adjudication.

(A) For high volume providers that received Medicaid outpatient payments equaling at least $200,000 during calendar year 2004.

(i) For children's hospitals and state-owned hospitals as defined in §355.8052 of this division (relating to Inpatient Hospital Reimbursement), the percentage of allowable charges is 76.03 percent, except as described in subparagraph (C) of this paragraph.

(ii) For rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 100 percent.

(iii) For all other providers, the percentage of allowable charges is 72.00 percent.

(B) For all providers not considered high volume providers as determined in paragraph (1)(A) of this subsection.

(i) For children's hospitals and state-owned hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 72.27 percent, except as described in subparagraph (C) of this paragraph.

(ii) For rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 100 percent.

(iii) For all other providers, the percentage of allowable charges is 68.44 percent.

(C) For children's hospitals:

(i) The percentage of allowable charges described in subparagraphs (A)(i) and (B)(i) of this paragraph are subject to the prior written approval of the Legislative Budget Board and the Governor, as required by the 2014-2015 General Appropriations Act (Article II, Health and Human Services Comm., S.B. 1, 83rd Leg., Regular Session, 2013, Rider 83 and Special Provisions Relating to All Health and Human Services Agencies, Section 44, Rate Limitations and Reporting Requirements).

(ii) If the percentages of allowable charges described in subparagraphs (A)(i) and (B)(i) of this paragraph are not approved as described in clause (i) of this subparagraph, the percentages of allowable charges described in subparagraphs (A)(iii) and (B)(iii) of this paragraph apply.

(D) For outpatient emergency department (ED) services that do not qualify as emergency visits, which are listed in the Texas Medicaid Provider Procedures Manual and other updates on the claims administrator's website, HHSC will reimburse:

(i) rural hospitals, as defined in §355.8052 of this division, an amount not to exceed 65 percent of allowable charges after application of the methodology in paragraph (2)(C) of this subsection, which will result in a payment that does not exceed 65 percent of allowable cost; and

(ii) all other hospitals, a flat fee set at a percentage of the Medicaid acute care physician office visit amount for adults.

(2) HHSC will determine an outpatient interim rate for each non-rural hospital, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's Medicaid cost report.

(A) For a non-rural hospital with at least one tentative cost report settlement completed prior to September 1, 2013, the interim rate is the rate in effect on August 31, 2013, except the hospital will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(B) For a non-rural new hospital that does not have at least one tentative cost report settlement completed prior to September 1, 2013, the default interim rate is 50 percent until the interim rate is adjusted as follows:

(i) If the non-rural hospital files a short-period cost report for its first cost report, the hospital will be assigned the interim rate calculated upon completion of the hospital's first tentative cost report settlement.

(ii) The hospital will be assigned the interim rate calculated upon completion of the hospital's first full-year tentative cost report settlement.

(iii) The hospital will retain the interim rate calculated as described in clause (ii) of this subparagraph, except it will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(C) Interim claim reimbursement for non-rural hospitals is determined by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection by the outpatient interim rate in effect on the date of service.

(D) Cost settlement. Interim claim reimbursement determined in subparagraph (C) of this paragraph will be cost-settled at both tentative and final audit of a non-rural hospital's cost report. The calculation of allowable costs will be determined based on the amount of allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection.

(i) Interim payments for claims with a date of service prior to September 1, 2013, will be cost settled.

(ii) Interim payments for claims with a date of service on or after September 1, 2013, will be included in the cost report interim rate calculation, but will not be adjusted due to cost settlement unless the settlement calculation indicates an overpayment.

(iii) HHSC will calculate an interim rate at tentative and final cost settlement for the purposes described in subparagraph (B) of this paragraph.

(iv) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year exceeded the allowable costs for those services, HHSC will recoup the amount paid to the hospital in excess of allowable costs.

(v) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year was less than the allowable costs for those services, HHSC will not make additional payments through cost settlement to the hospital for service dates on or after September 1, 2013.

(3) HHSC will determine an outpatient interim rate for each rural hospital, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's Medicaid cost report.

(A) For a rural hospital with at least one tentative cost report settlement completed prior to September 1, 2021, the interim rate effective on September 1, 2021, is the rate calculated in the latest initial cost report with an additional percentage increase, not to exceed an interim rate of 100 percent. After September 1, 2021, a rural hospital will be assigned the interim rate calculated upon completion of each

initial or amended initial cost report, with an additional percentage increase, not to exceed an interim rate of 100 percent.

(B) For a new rural hospital that does not have at least one initial cost report completed prior to September 1, 2021, the default interim rate is 50 percent until the interim rate is adjusted as follows.

(i) If the rural hospital files a short-period cost report for their first cost report, the hospital will continue to receive the default rate until completion of the first full-year initial cost report.

(ii) The rural hospital will be assigned the interim rate calculated upon completion of a review of the hospital's first full-year initial or amended initial cost report, with an additional percentage increase, not to exceed an interim rate of 100 percent.

(C) Interim claim reimbursement for a rural hospital is determined by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection by the outpatient interim rate in effect on the date of service as described in subparagraph (A) of this paragraph.

(D) Interim claim reimbursement determined in subparagraph (C) of this paragraph will not be cost-settled for services rendered on or after September 1, 2021.

(c) Outpatient hospital surgery. Outpatient hospital non-emergency surgery is reimbursed in accordance with the methodology for ambulatory surgical centers as described in §355.8121 of this subchapter (relating to Reimbursement).

(d) Outpatient hospital imaging.

(1) For all hospitals except rural hospitals, as defined in §355.8052 of this division, outpatient hospital imaging services are not reimbursed under the outpatient reimbursement methodology described in subsection (b) of this section. Outpatient hospital imaging services are reimbursed according to an outpatient hospital imaging service fee schedule that is based on a percentage of the Medicare Outpatient Prospective Payment System fee schedule for similar services. If a resulting fee for a service provided to any Medicaid beneficiary is greater than 125 percent of the Medicaid adult acute care fee for a similar service, the fee is reduced to 125 percent of the Medicaid adult acute care fee.

(2) For rural hospitals, outpatient hospital imaging services are reimbursed based on a percentage of the Medicare Outpatient Prospective Payment System fee schedule for similar services.

(e) Minimum Fee Schedule. Effective March 1, 2021, Managed Care Organizations are required to reimburse rural hospitals based on a minimum fee schedule. The minimum fee schedules are the rates specific to rural hospitals, as described in subsections (b) through (d).

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 July 30, 2021.

TRD-202102979
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 730-7401

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 13. TEXAS HISTORIC PRESERVATION TAX CREDIT PROGRAM

13 TAC §13.1, §13.5

The Texas Historical Commission (Commission) proposes amendments to 13 Texas Administrative Code, §13.1 and §13.5, concerning the Texas Historic Preservation Tax Credit Program.

The proposed amendments collectively clarify certain program definitions and requirements, through edits, additions, and deletions.

Section 13.1 provides definitions for the program, which help shape application and review requirements. Superfluous information is removed from §13.1(10), which defines the Commission. Section 13.1(5), which defines eligible costs and expenses has historically copied language directly from the program statute in the Texas Tax Code. Legislation passed in the 2021 legislative session will alter this language when enacted on January 1, 2022. Rather than copy the future statute language at the time that it changes, and again when any future changes are made, this amendment provides a more general reference. Section 13.1(19) receives new language to tie the requirements for a phased development to the new definition for a project, which is now §13.1(21). This new definition provides guidance for the types of work items that make up a project that can be submitted as part of an application for review and approval. Amendments to §13.1(20) provide for additional forms of documentation related to a project's completion date and bring the administrative rules in line with program practice.

Section 13.5 lays out the requirements for the Part C application, which presents a completed architectural project for final certification by the Commission. Section 13.5(2) is deleted as an applicant's tax identification numbers are not required for the Commission's purposes and have not been collected. New §13.5(4), which outlines required documentation of a placed in service date, is amended to reflect the edits to §13.1(20).

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering the proposed rule because the amendments clarify existing policies and program requirements and update references to statutes.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five-year period the amended rules are in effect, the public benefit will be a clearer understanding of all program requirements and policies.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. Because the proposed amendments clarify existing procedures and policies and do not add new requirements, there are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and §2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or microbusinesses as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. In accordance with Texas Government Code, §2006.0221, the Commission makes the following determinations. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed amendments may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY. These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission and the Texas Tax Code §171.909, which requires the Commission to adopt rules for the implementation of the rehabilitation tax credit program.

CROSS REFERENCE TO STATUTE. These amendments are proposed under the authority of Texas Tax Code §171.009, which requires the Commission to adopt rules for the implementation of the Tax Credit for Certified Rehabilitation of Certified Historic Structures. The proposed amendment implements Subchapter S of the Texas Tax Code. No other statutes, articles, or codes are affected by these amendments.

§13.1. Definitions.

The following words and terms when used in these rules shall have the following meanings unless the context clearly indicates otherwise:

(1) Applicant--The entity that has submitted an application for a building or structure it owns or for which it has a contract to purchase.

(2) Application--A fully completed Texas Historic Preservation Tax Credit Application form submitted to the Commission, which includes three parts:

(A) Part A - Evaluation of Significance, to be used by the Commission to make a determination whether the building is a certified historic structure;

(B) Part B - Description of Rehabilitation, to be used by the Commission to review proposed projects for compliance with the Standards for Rehabilitation; and

(C) Part C - Request for Certification of Completed Work, to be used by the Commission to review completed projects for compliance with the work approved under Part B.

(3) Application fee--The fee charged by the Commission and paid by the applicant for the review of Part B and Part C of the application as follows:
Figure: 13 TAC §13.1(3) (No change.)

(4) Audited cost report--Such documentation as defined by the Comptroller in 34 TAC Chapter 3, Tax Administration.

(5) Building--Any edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is principally to shelter any form of human activity, such as shelter or housing, or to provide working, office, parking, display, or sales space. The term includes among other examples, banks, office buildings, factories, warehouses, barns, railway or bus stations, and stores and may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn. Functional constructions made usually for purposes other than creating human shelter or activity such as bridges, windmills, and towers are not considered buildings under this definition and are not eligible to be certified historic structures.

(6) Certificate of Eligibility--A document issued by the Commission to the owner, following review and approval of a Part C application, that confirms the property to which the eligible costs and expenses relate is a certified historic structure and the rehabilitations qualifies as a certified rehabilitation; and specifies the date the certified historic structure was first placed in service after the rehabilitation.

(7) Certified historic structure--A building or buildings located on a property in Texas that is certified by the Commission as:

(A) listed individually in the National Register of Historic Places;

(B) designated as a Recorded Texas Historic Landmark under §442.006, Texas Government Code, or as a State Antiquities Landmark under Chapter 191, Texas Natural Resources Code; §21.6 and §26.3(63) - (64) of this title; or

(C) certified by the Commission as contributing to the historic significance of:

(i) a historic district listed in the National Register of Historic Places; or

(ii) a certified local district as per 36 CFR §67.9.

(8) Certified local district--A local historic district certified by the United States Department of the Interior in accordance with 36 C.F.R §67.9.

(9) Certified rehabilitation--The rehabilitation of a certified historic structure that the Commission has certified as meeting the Standards for Rehabilitation. If the project is submitted for the federal rehabilitation tax credit it must be reviewed by the National Park Service prior to a determination that it meets the requirements for a certified

rehabilitation under this rule. In the absence of a determination for the federal rehabilitation tax credit, the Commission shall have the sole responsibility for certifying the project.

(10) Commission--The Texas Historical Commission. [~~For the purpose of notification or filing of any applications or correspondence, delivery shall be made via postal mail to: Texas Historic Preservation Tax Credit Program, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276; or by overnight delivery at: Texas Historic Preservation Tax Credit Program, Texas Historical Commission, 1700 North Congress Avenue, Suite B-65, Austin, Texas 78701.~~]

(11) Comptroller--The Texas Comptroller of Public Accounts.

(12) Contributing--A building in a historic district considered to be historically, culturally, or architecturally significant according to the criteria established by state or federal government, including those formally promulgated by the National Park Service and the United Sates Department of the Interior at 36 C.F.R. Part 60 and applicable national Register bulletins.

(13) Credit--The tax credit for the certified rehabilitation of certified historic structures available pursuant to Chapter 171, Subchapter S of the Texas Tax Code.

(14) District--A geographically definable area, urban, or rural, possessing a significant concentration, linkage, or continuity of sites, building, structures, or objects united by past events geographically but linked by association or history.

(15) Eligible costs and expenses--The qualified rehabilitation expenditures as defined by §47(c)(2), Internal Revenue Code, including rehabilitation expenses as set out in 26 C.F.R. §1.48-12(c), incurred during the project, except as otherwise specified in Chapter 171, Subchapter S of the Texas Tax Code. [~~The depreciation and tax-exempt use provisions of §47(c)(2) do not apply to the costs and expenses incurred by an entity exempt from the tax imposed by §171.063 of the Tax Code or by authorized investment of public funds, governed by Chapter 2256 by an institution of higher education or university system as defined by §61.003, Education Code if the other provisions of §47(c)(2) are met.~~]

(16) Federal rehabilitation tax credit--A federal tax credit for 20 % of qualified rehabilitation expenditures with respect to a certified historic structure, as defined in §47, Internal Revenue Code; 26 C.F.R. §1.48-12; and 36 C.F.R. Part 67.

(17) National Park Service--The agency of the U.S. Department of the Interior that is responsible for certifying projects to receive the federal rehabilitation tax credit.

(18) Owner--A person, partnership, company, corporation, whether for profit or not, governmental body, an institution of higher education or university system or any other entity holding a legal or equitable interest in a Property or Structure, which can include a full or partial ownership interest. A long-term lessee of a property may be considered an owner if their current lease term is at a minimum 27.5 years for residential rental property or 39 years for nonresidential real property, as referenced by §47(c)(2), Internal Revenue Code.

(19) Phased development--A rehabilitation project which may reasonably be expected to be completed in two or more distinct states of development, as defined by United States Treasury Regulation 26 C.F.R. §1.48-12(b)(2)(v). Each phase of a phased development can independently support an Application for a credit as though [~~thought~~] it was a stand-alone rehabilitation, as long as each phase meets the definition of a Project. If any completed phase of the rehabilitation project does not meet the requirements of a certified rehabilitation, future applications by the same owner for the same certified historic structure will not be considered.

(20) Placed in Service--A status obtained upon completion of the rehabilitation project as described in the Part B application, and any subsequent amendments, and documented in the Part C application [~~when the building is ready to be reoccupied and any permits and licenses needed to occupy the building have been issued~~]. Evidence of the date a property is placed in service includes a certificate of occupancy issued by the local building official and/or an architect's certificate of substantial completion. Other documents will suffice when certificates of occupancy and/or substantial completion are not available for a specific project, including final contractor invoices or other verifiable statements of completion. Alternate documents should be approved by the Commission before submission. Placed in Service documentation must indicate the date that work was completed.

(21) Project--A specified scope of work, as described in a rehabilitation plan submitted with a Part B application and subsequent amendments, comprised of work items that will be fully completed and Placed in Service. Examples of a project may include, but are not limited to, a whole building rehabilitation, rehabilitation of individual floors or spaces within a building, repair of building features, or replacement of building systems (such as mechanical, electrical, and plumbing systems). Partial or incomplete scopes of work, such as project planning and design, demolition, or partial completion of spaces, features, or building systems are not included in this definition as projects. Per §13.6(d)(5) of this title, the Commission's review encompasses the entire building and site even if other work items are not included in a submitted project.

(22) [~~(21)~~] Property--A parcel of real property containing one or more buildings or structures that is the subject of an application for a credit.

(23) [~~(22)~~] Rehabilitation--The process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while retaining those portions and features of the building and its site and environment which are significant.

(24) [~~(23)~~] Rehabilitation plan--Descriptions, drawings, construction plans, and specifications for the proposed rehabilitation of a certified historic structure in sufficient detail to enable the Commission to evaluate compliance with the Standards for Rehabilitation.

(25) [~~(24)~~] Standards for Rehabilitation--The United States Secretary of the Interior's Standards for Rehabilitation as defined in §67.7.

(26) [~~(25)~~] Structure--A building; see also certified historic structure.

(27) [~~(26)~~] Tax Credit--A credit earned against either the state franchise tax or the insurance premium tax per §171 of the Texas Tax Code and any limitations provided therein.

§13.5. Request for Certification of Completed Work.

(a) Application Part C - Request for Certification of Completed Work. Part C of the application requires information to allow the Commission to certify the completed work follows the Standards for Rehabilitation and the rehabilitation plan as approved by the Commission in the Part B review. Part C may be submitted when the project is placed in service.

(b) Application requirements. Information to be submitted in the Part C includes:

(1) Name, mailing address, telephone number, and email address of the property owner(s);

~~[(2) Tax identification number(s);]~~

(2) [~~(3)~~] Name and address of the property;

(3) [~~(4)~~] Photographs of the completed work showing similar views of the photographs provided in Parts A and B. Photographs must be formatted as directed by the Commission in published program guidance materials on the Commission's online Texas Historic Preservation Tax Credit Application Guide available by accessing thc.texas.gov;

(4) [~~(5)~~] Evidence of the placed in service date, such as a certificate of occupancy issued by the local building official, [~~or a~~] certificate of substantial completion, final invoice issued by a contractor, or alternative documentation approved by the Commission; and

(5) [~~(6)~~] Other information required on the application by the Commission.

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 July 29, 2021.

TRD-202102943
Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 463-6100

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to existing 16 Texas Administrative Code (TAC) §25.43, 25.471, 25.475, 25.479, and 25.498. The commission also proposes new 16 TAC §25.499, relating to Acknowledgement of Risk Requirements for Certain Commercial Contracts. These proposed rules will implement an amendment to Texas Utilities Code §17.003(d-1)(c) enacted by the 87th Texas Legislature requiring electric utilities and retail electric providers to periodically provide to customers information concerning load shed, type of customers and procedure to be considered for critical care or critical load, and reducing electricity use at times when involuntary load shed events may be implemented. These proposed rules will also prohibit the offering of wholesale indexed products to residential or small commercial customers and require customers other than residential or small commercial customers to sign an acknowledgement of risk prior to enrolling in any indexed products or products that contain a separate assessment for ancillary service charges. Finally, these amendments will pass additional, related customer protections.

The commission also requests comment from interested persons on the following questions:

1. Should the maximum rate for provider of last resort service that is charged by a large service provider to a residential customer in proposed §25.43(m)(2)(A)(iii) and small and medium non-residential customers in proposed §25.43(m)(2)(B)(iv) include a safety threshold to prevent the energy charge from increasing by more than a certain percentage on a year-to-year basis? If so, what is an appropriate safety threshold?

2. Do the acknowledgement of risk requirements in proposed §25.475(c)(3)(G) and §25.475(j) provide adequate customer protections for residential and small commercial customers that enroll in indexed retail electric products and retail electric products that allow for the pass-through of ancillary service charges? If not, should these products be prohibited for residential and small commercial customers?

Comments responding to these questions should be filed in accordance with the instructions below under the heading **"Public Comments."**

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 create a new regulation to implement PURA §39.110 as enacted by the 87th Texas Legislature;

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

(7) the proposed rule will change the number of individuals subject to the rule's applicability by applying certain minor provisions of §25.475 to brokers and transmission and distribution utilities; 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

Cliff Crouch, Customer Protection 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

Mr. Crouch has also determined that for each year of the first five years the proposed rules and amendments are in effect, the anticipated public benefits expected as a result of the adoption of the proposed rules and amendments will be increased customer awareness of potential impacts to their electric bills, increased customer protections for the products they are enrolling in, and increased knowledge of availability of critical care and critical load designations. Mr. Crouch does not believe there will be any major economic costs 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 September 14, 2021, at 9:30 a.m. in the Commissioners' Hearing Room, 7th floor, William B. Travis Building if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by September 7, 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.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by **August 27, 2021.** Reply comments must be filed by **September 7, 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. **Commission staff strongly encourages commenters to include a bulleted executive summary to assist Commission Staff in reviewing the filed comments in a timely fashion.** All comments should refer to Project Number 51830.

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.43

Statutory Authority

These new rules are proposed under the following provision of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §17.003, which requires electric utilities and retail electric providers to provide clear and uniform information about rates, terms, services, involuntary load shed procedures, critical designations, and procedures for applying for critical designations; §17.102, which directs the commission to adopt and enforce rules requiring that charges on an electric service provider's bill be clearly and easily identified, §39.101, which requires the commission to ensure that retail customer protections are established that entitle a customer to safe, reliable, and reasonably priced electricity, and other protections; §39.106, which requires that the commission designate providers of last resort; §39.107(g), which prohibits metered electric service being sold to residential customers on a prepaid basis at a price that is higher than the price charged by the POLR, §39.110, which prohibits the offering of wholesale indexed products to residential or small commercial customers and placed conditions on the enrollment of other customers in wholesale indexed products; §39.112, which requires a REP to provide certain information to a residential customer who has a fixed rate product.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 17.003, 17.102, 39.101, 39.106, 39.107(g), 39.110, and 39.112.

§25.43. Provider of Last Resort (POLR).

(a) Purpose. This [~~The purpose of this~~] section [~~is to~~] establishes [~~establish~~] the requirements for Provider of Last Resort (POLR) service and ensures [~~ensure~~] that it is available to any requesting retail customer and any retail customer who is transferred to another retail electric provider (REP) by the Electric Reliability Council of Texas (ERCOT) because the customer's REP failed to provide service to the customer or failed to meet its obligations to the independent organization.

(b) Application. The provisions of this section relating to the selection of REPs providing POLR service apply to all REPs that are serving retail customers in transmission and distribution utility (TDU) service areas. This section does not apply when an electric cooperative or a municipally owned utility (MOU) designates a POLR provider for its certificated service area. However, this section is applicable when an electric cooperative delegates its authority to the commission in accordance with subsection (r) of this section to select a POLR provider for the electric cooperative's service area. All filings made with the commission pursuant to this section, including filings subject to a claim of confidentiality, must [~~shall~~] be filed with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and other Documents).

(c) Definitions. The following [~~words and~~] terms when used in this section [~~shall~~] have the following meanings [~~meaning~~], unless the context indicates otherwise:

(1) Affiliate -- As defined in §25.107 of this title (relating to Certification of Retail Electric Providers (REPs).

(2) Basic firm service -- Electric service that is not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. Basic firm ser-

vice excludes, among other competitively offered options, emergency or back-up service, and stand-by service. For purposes of this definition, the phrase "interruption for economic reasons" does not mean disconnection for non-payment.

(3) Billing cycle -- A period bounded by a start date and stop date that REPs and TDUs use to determine when a customer used electric service.

(4) Billing month -- Generally a calendar accounting period (approximately 30 days) for recording revenue, which may or may not coincide with the period a customer's consumption is recorded through the customer's meter.

(5) Business day -- As defined by the ERCOT Protocols.

(6) Large non-residential customer -- A non-residential customer who had a peak demand in the previous 12-month period at or above one megawatt (MW).

(7) Large service provider (LSP) -- A REP that is designated to provide POLR service pursuant to subsection (j) of this section.

(8) Market-based product--A month-to-month product that is either offered to or matches the rate of a product offered to non-POLR customers of the REP for the same TDU territory and customer class. A month-to-month contract may not contain a termination fee or penalty. For purposes of this section, a rate for residential customers that is derived by applying a positive or negative multiplier to the rate described in subsection (m)(2) of this section is not a market-based product.

(9) Mass transition -- The transfer of customers as represented by ESI IDs from a REP to one or more POLR providers pursuant to a transaction initiated by the independent organization that carries the mass transition (TS) code or other code designated by the independent organization.

(10) Medium non-residential customer -- A non-residential retail customer who had a peak demand in the previous 12-month period of 50 kilowatt (kW) or greater, but less than 1,000 kW.

(11) POLR area -- The service area of a TDU in an area where customer choice is in effect.

(12) POLR provider -- A volunteer retail electric provider (VREP) or LSP that may be required to provide POLR service pursuant to this section.

(13) Residential customer -- A retail customer classified as residential by the applicable TDU tariff or, in the absence of classification under a tariff, a retail customer who purchases electricity for personal, family, or household purposes.

(14) Transitioned customer -- A customer as represented by ESI IDs that is served by a POLR provider as a result of a mass transition under this section.

(15) Small non-residential customer -- A non-residential retail customer who had a peak demand in the previous 12-month period of less than 50 kW.

(16) Voluntary retail electric provider (VREP) -- A REP that has volunteered to provide POLR service pursuant to subsection (i) of this section.

(d) POLR service.

(1) There are two types of POLR providers: VREPs and LSPs.

(2) For the purpose of POLR service, there are four classes of customers: residential, small non-residential, medium non-residential, and large non-residential.

(3) A VREP or LSP may be designated to serve any or all of the four customer classes in a POLR area.

(4) A POLR provider must [~~shall~~] offer a basic, standard retail service package to customers it is designated to serve, which is [~~shall be~~] limited to:

(A) Basic firm service; and

(B) Call center facilities available for customer inquiries.

(5) A POLR provider must [~~shall~~], in accordance with §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges), fulfill billing and collection duties for REPs that have defaulted on payments to the servicer of transition bonds or to TDUs.

(6) Each LSP's customer billing for residential customers taking POLR service under a rate prescribed by subsection (m)(2) of this section must [~~shall~~] contain notice to the customer that other competitive products or services may be available from the LSP or another REP. The notice must [~~shall~~] also include contact information for the LSP, and the Power to Choose website, and must [~~shall~~] include a notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to an LSP, a description of the purpose and nature of POLR service, and explaining that more information on competitive markets can be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839).

(e) Standards of service.

(1) An LSP designated to serve a class in a given POLR area must [~~shall~~] serve any eligible customer requesting POLR service or assigned to the LSP pursuant to a mass transition in accordance with the Standard Terms of Service in subsection (f)(1) of this section for the provider customer's class. However, in lieu of providing terms of service to a transitioned customer under subsection (f) of this section and under a rate prescribed by subsection (m)(2) of this section an LSP may at its discretion serve the customer pursuant to a market-based month-to-month product, provided it serves all transitioned customers in the same class and POLR area pursuant to the product.

(2) A POLR provider must [~~shall~~] abide by the applicable customer protection rules as provided for under Subchapter R of this chapter (relating to Customer Protection Rules for Retail Electric Service), except that if there is an inconsistency or conflict between this section and Subchapter R of this chapter, the provisions of this section [~~shall~~] apply. However, for the medium non-residential customer class, the customer protection rules as provided for under Subchapter R of this chapter do not apply, except for §25.481 of this title (relating to Unauthorized Charges), §25.485(a)-(b) of this title (relating to Customer Access and Complaint Handling), and §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider).

(3) An LSP that has received commission approval to designate one of its affiliates to provide POLR service on behalf of the LSP pursuant to subsection (k) of this section must [~~shall~~] retain responsibility for the provision of POLR service by the LSP affiliate and remains liable for violations of applicable laws and commission rules and all financial obligations of the LSP affiliate associated with the provisioning of POLR service on its behalf by the LSP affiliate.

(f) Customer information.

(1) The Standard Terms of Service prescribed in subparagraphs (A)-(D) of this paragraph apply to POLR service provided by an LSP under a rate prescribed by subsection (m)(2) of this section.

(A) Standard Terms of Service, POLR Provider Residential Service:
Figure: 16 TAC §25.43(f)(1)(A) (No change.)

(B) Standard Terms of Service, POLR Provider Small Non-Residential Service:
Figure: 16 TAC §25.43(f)(1)(B) (No change.)

(C) Standard Terms of Service, POLR Provider Medium Non-Residential Service:
Figure: 16 TAC §25.43(f)(1)(C) (No change.)

(D) Standard Terms of Service, POLR Provider Large Non-Residential Service:
Figure: 16 TAC §25.43(f)(1)(D) (No change.)

(2) An LSP providing service under a rate prescribed by subsection (m)(2) of this section must [~~shall~~] provide each new customer the applicable Standard Terms of Service. Such Standard Terms of Service must [~~shall~~] be updated as required under §25.475(f) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers).

(g) General description of POLR service provider selection process.

(1) Each REP [~~All REPs~~] must [~~shall~~] provide information to the commission in accordance with subsection (h)(1) of this section. Based on this information, the commission's designated representative will [~~shall~~] designate REPs that are eligible to serve as POLR providers in areas of the state in which customer choice is in effect, except that the commission will [~~shall~~] not designate POLR providers in the service areas of MOUs or electric cooperatives unless an electric cooperative has delegated to the commission its authority to designate the POLR provider, in accordance with subsection (r) of this section.

(2) POLR providers must [~~shall~~] serve two-year terms. The initial term for POLR service in areas of the state where retail choice is not in effect as of the effective date of the rule must [~~shall~~] be set at the time POLR providers are initially selected in such areas.

(h) REP eligibility to serve as a POLR provider. In each even-numbered year, the commission will [~~shall~~] determine the eligibility of certified REPs to serve as POLR providers for a term scheduled to commence in January of the next year.

(1) Each REP must [~~All REPs shall~~] provide information to the commission necessary to establish its [~~their~~] eligibility to serve as a POLR provider for the next term. A REP must [~~REPs shall~~] file, by July 10th[~~,~~] of each even-numbered year, by service area, information on the classes of customers it provides [~~they provide~~] service to, and for each customer class, the number of ESI IDs the REP serves and the retail sales in megawatt-hours for the annual period ending March 31 of the current year. As part of that filing, a REP may request that the commission designate one of its affiliates to provide POLR service on its behalf pursuant to subsection (k) of this section in the event that the REP is designated as an LSP. The independent organization must [~~shall~~] provide to the commission the total number of ESI ID and total MWh data for each class. Each REP must [~~All REPs shall~~] also provide information on its [~~their~~] technical capability and financial ability to provide service to additional customers in a mass transition. The commission's determination regarding eligibility of a REP to serve as POLR provider under the provisions of this section will [~~shall~~] not be considered confidential information.

(2) Eligibility to be designated as a POLR provider is specific to each POLR area and customer class. A REP is eligible to be designated a POLR provider for a particular customer class in a POLR area, unless:

(A) A proceeding to revoke or suspend the REP's certificate is pending at the commission, the REP's certificate has been suspended or revoked by the commission, or the REP's certificate is deemed suspended pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs));

(B) The sum of the numeric portion of the REP's percentage of ESI IDs served and percentage of retail sales by MWhs in the POLR area, for the particular class, is less than 1.0;

(C) The commission does not reasonably expect the REP to be able to meet the criteria set forth in subparagraph (B) of this paragraph during the entirety of the term;

(D) On the date of the commencement of the term, the REP or its predecessor will not have served customers in Texas for at least 18 months;

(E) The REP does not serve the applicable customer class, or does not have an executed delivery service agreement with the service area TDU;

(F) The REP is certificated as an Option 2 REP under §25.107 of this title;

(G) The REP's customers are limited to its own affiliates;

(H) A REP files an affidavit stating that it does not serve small or medium non-residential customers, except for the low-usage sites of the REP's large non-residential customers, or commonly owned or franchised affiliates of the REP's large non-residential customers and opts out of eligibility for either, or both of the small or medium non-residential customer classes; or

(I) The REP does not meet minimum financial, technical and managerial qualifications established by the commission under §25.107 of this title.

(3) For each term, the commission will [~~shall~~] publish the names of all [~~of the~~] REPs eligible to serve as a POLR provider under this section for each customer class in each POLR area and will [~~shall~~] provide notice to REPs determined to be eligible to serve as a POLR provider. A REP may challenge its eligibility determination within five business days of the notice of eligibility by filing with the commission additional documentation that includes the specific data, the specific calculation, and a specific explanation that clearly illustrate and prove the REP's assertion. Commission staff will [~~shall~~] verify the additional documentation and, if accurate, reassess the REP's eligibility. Commission staff will [~~shall~~] notify the REP of any change in eligibility status within 10 business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of POLR providers.

(4) A standard form may be created by the commission for REPs to use in filing information concerning their eligibility to serve as a POLR provider.

(5) If ERCOT or a TDU has reason to believe that a REP is no longer capable of performing POLR responsibilities, ERCOT or the TDU must [~~shall~~] make a filing with the commission detailing the basis for its concerns and must [~~shall~~] provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU must [~~shall~~] file the confidential

information in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials). Commission staff will [~~shall~~] review the filing **[,]** and will [~~shall~~] request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing POLR service. No ESI IDs will [~~shall~~] be assigned to a POLR provider after the commission staff initiates a proceeding to disqualify the POLR provider, unless the commission by order confirms the POLR provider's designation.

(i) VREP list. Based on the information provided in accordance with this subsection and subsection (h) of this section, the commission will [~~shall~~] post the names of VREPs on its webpage, including the aggregate customer count offered by VREPs. A REP may submit a request to be a VREP no earlier than June 1, and no later than July 31, of each even-numbered year unless otherwise determined by the executive director. This filing must [~~shall~~] include a description of the REP's capabilities to serve additional customers as well as the REP's current financial condition in enough detail to demonstrate that the REP is capable of absorbing a mass transition of customers without technically or financially distressing the REP and the specific information set out in this subsection. The commission's determination regarding eligibility of a REP to serve as a VREP, under the provisions of this section, will [~~shall~~] not be considered confidential information.

(1) A VREP must [~~shall~~] provide to the commission the name of the REP, the appropriate contact person with current contact information, which customer classes the REP is willing to serve within each POLR area, and the number of ESI IDs the REP is willing to serve by customer class and POLR area in each transition event.

(2) A REP that has met the eligibility requirements of subsection (h) of this section and provided the additional information set out in this subsection is eligible for designation as a VREP.

(3) Commission staff will [~~shall~~] make an initial determination of the REPs that are to serve as a VREP for each customer class in each POLR area and publish their names. A REP may challenge its eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional evidence of its capability to serve as a VREP. Commission staff will [~~shall~~] reassess the REP's eligibility and notify the REP of any change in eligibility status within 10 business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of VREPs.

(4) A VREP may file a request at any time to be removed from the VREP list or to modify the number of ESI IDs that it is willing to serve as a VREP. If the request is to increase the number of ESI IDs, it must [~~shall~~] provide information to demonstrate that it is capable of serving the additional ESI IDs, and the commission staff will [~~shall~~] make an initial determination, which is subject to an appeal to the commission, in accordance with the timelines specified in paragraph (3) of this subsection. If the request is to decrease the number of ESI IDs, the request must [~~shall~~] be effective five calendar days after the request is filed with the commission; however, after the request becomes effective the VREP must [~~shall~~] continue to serve ESI IDs previously acquired through a mass transition event as well as ESI IDs the VREP acquires from a mass transition event that occurs during the five-day notice period. If in a mass transition a VREP is able to acquire more customers than it originally volunteered to serve, the VREP may work with commission staff and ERCOT to increase its designation. Changes approved by commission staff will [~~shall~~] be communicated to ERCOT and must [~~shall~~] be implemented for the current allocation if possible.

(5) ERCOT or a TDU may challenge a VREP's eligibility. If ERCOT or a TDU has reason to believe that a REP is no longer capable of performing VREP responsibilities, ERCOT or the TDU must [~~shall~~] make a filing with the commission detailing the basis for its concerns and must [~~shall~~] provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU must [~~shall~~] file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff will [~~shall~~] review the filing of ERCOT and if commission staff concludes that the REP should no longer provide VREP service, it will [~~shall~~] request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing VREP service. No ESI IDs will [~~shall~~] be assigned to a VREP after the commission staff initiates a proceeding to disqualify the VREP, unless the commission by order confirms the VREP's designation.

(j) LSPs. This subsection governs the selection and service of REPs as LSPs.

(1) The REPs eligible to serve as LSPs must [~~shall~~] be determined based on the information provided by REPs in accordance with subsection (h) of this section. However, for new TDU service areas that are transitioned to competition, the transition to competition plan approved by the commission may govern the selection of LSPs to serve as POLR providers.

(2) In each POLR area, for each customer class, the commission will [~~shall~~] designate up to 15 LSPs. The eligible REPs that have the greatest market share based upon retail sales in megawatt-hours, by customer class and POLR area must [~~shall~~] be designated as LSPs. Commission staff will [~~shall~~] designate the LSPs by October 15th of each even-numbered year, based upon the data submitted to the commission under subsection (h) of this section. Designation as a VREP does not affect a REP's eligibility to also serve as an LSP.

(3) For the purpose of calculating the POLR rate for each customer class in each POLR area, an EFL must [~~shall~~] be completed by the LSP that has the greatest market share in accordance with paragraph (2) of this subsection. The Electricity Facts Label (EFL) must [~~shall~~] be supplied to commission staff electronically for placement on the commission webpage by January 1 of each year, and more often if there are changes to the non-bypassable charges. Where REP-specific information is required to be inserted in the EFL, the LSP supplying the EFL must [~~shall~~] note that such information is REP-specific.

(4) An LSP serving transitioned residential and small non-residential customers under a rate prescribed by subsection (m)(2) of this section must [~~shall~~] move such customers to a market-based month-to-month product, with pricing for such product to be effective no later than either the 61st day of service by the LSP or beginning with the customer's next billing cycle date following the 60th day of service by the LSP. For each transition event, all such transitioned customers in the same class and POLR area must be served pursuant to the same product terms, except for those customers specified in subparagraph (B) of this paragraph.

(A) The notice required by §25.475(d) of this title to inform the customers of the change to a market-based month-to-month product may be included with the notice required by subsection (t)(3) of this section or may be provided 14 days in advance of the change. If the §25.475(d) notice is included with the notice required by subsection (t)(3) of this section, the LSP may state that either or both the terms of service document and EFL for the market-based month-to-month product will [~~shall~~] be provided at a later time, but no later than 14 days before their effective date.

(B) The LSP is not required to transfer to a market-based product any transitioned customer who is delinquent in payment of any charges for POLR service to such LSP as of the 60th day of service. If such a customer becomes current in payments to the LSP, the LSP must [~~shall~~] move the customer to a market-based month-to-month product as described in this paragraph on the next billing cycle that occurs five business days after the customer becomes current. If the LSP does not plan to move customers who are delinquent in payment of any charges for POLR service as of the 60th day of service to a market-based month-to-month product, the LSP must [~~shall~~] inform the customer of that potential outcome in the notice provided to comply with §25.475(d) of this title.

(5) Upon a request from an LSP and a showing that the LSP will be unable to maintain its financial integrity if additional customers are transferred to it under this section, the commission may relieve an LSP from a transfer of additional customers. The LSP must [~~shall~~] continue providing continuous service until the commission issues an order relieving it of this responsibility. In the event the requesting LSP is relieved of its responsibility, the commission staff designee will [~~shall~~], with 90 days' notice, designate the next eligible REP, if any, as an LSP, based upon the criteria in this subsection.

(k) Designation of an LSP affiliate to provide POLR service on behalf of an LSP.

(1) An LSP may request the commission designate an LSP affiliate to provide POLR service on behalf of the LSP either with the LSP's filing under subsection (h) of this section or as a separate filing in the current term project. The filing must [~~shall~~] be made at least 30 days prior to the date when the LSP affiliate is to begin providing POLR service on behalf of the LSP. To be eligible to provide POLR service on behalf of an LSP, the LSP affiliate must be certificated to provide retail electric service; have an executed delivery service agreement with the service area TDU; and meet the requirements of subsection (h)(2) of this section, with the exception of subsection (h)(2)(B), (C), (D), and (E) of this section as related to serving customers in the applicable customer class.

(2) The request must [~~shall~~] include the name and certificate number of the LSP affiliate, information demonstrating the affiliation between the LSP and the LSP affiliate, and a certified agreement from an officer of the LSP affiliate stating that the LSP affiliate agrees to provide POLR service on behalf of the LSP. The request must [~~shall~~] also include an affidavit from an officer of the LSP stating that the LSP will be responsible and indemnify any affected parties for all financial obligations of the LSP affiliate associated with the provisioning of POLR service on behalf of the LSP in the event that the LSP affiliate defaults or otherwise does not fulfill such financial obligations.

(3) Commission staff will [~~shall~~] make an initial determination of the eligibility of the LSP affiliate to provide POLR service on behalf of an LSP and publish their names. The LSP or LSP affiliate may challenge commission staff's eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional evidence of its capability to provide POLR service on behalf of the LSP. Commission staff will [~~shall~~] reassess the LSP affiliate's eligibility and notify the LSP and LSP affiliate of any change in eligibility status within 10 business days of the receipt of the additional documentation. If the LSP or LSP affiliate does not agree with staff's determination of eligibility, either or both may then appeal the determination to the commission through a contested case. The LSP must [~~shall~~] provide POLR service during the pendency of the contested case.

(4) ERCOT or a TDU may challenge an LSP affiliate's eligibility to provide POLR service on behalf of an LSP. If ERCOT or a TDU has reason to believe that an LSP affiliate is not eligible or is not performing POLR responsibilities on behalf of an LSP, ERCOT or the TDU must [~~shall~~] make a filing with the commission detailing the basis for its concerns and must [~~shall~~] provide a copy of the filing to the LSP and the LSP affiliate that are the subject of the filing. If the filing contains confidential information, ERCOT or the TDU must [~~shall~~] file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff will [~~shall~~] review the filing and if commission staff concludes that the LSP affiliate should not be allowed to provide POLR service on behalf of the LSP, it will [~~shall~~] request that the LSP affiliate demonstrate that it has the capability. The commission staff will [~~shall~~] review the LSP affiliate's filing and may initiate a proceeding with the commission to disqualify the LSP affiliate from providing POLR service. The LSP affiliate may continue providing POLR service to ESI IDs currently receiving the service during the pendency of the proceeding; however, the LSP must [~~shall~~] immediately assume responsibility to provide service under this section to customers who request POLR service, or are transferred to POLR service through a mass transition, during the pendency of the proceeding.

(5) Designation of an affiliate to provide POLR service on behalf of an LSP must [~~shall~~] not change the number of ESI IDs served or the retail sales in megawatt-hours for the LSP for the reporting period nor does such designation relieve the LSP of its POLR service obligations in the event that the LSP affiliate fails to provide POLR service in accordance with the commission rules.

(6) The designated LSP affiliate must [~~shall~~] provide POLR service and all reports as required by the commission's rules on behalf of the LSP.

(7) The methodology used by a designated LSP affiliate to calculate POLR rates must [~~shall~~] be consistent with the methodology used to calculate LSP POLR rates in subsection (m) of this section.

(8) If an LSP affiliate designated to provide POLR service on behalf of an LSP cannot meet or fails to meet the POLR service requirements in applicable laws and Commission rules, the LSP must [~~shall~~] provide POLR service to any ESI IDs currently receiving the service from the LSP affiliate and to ESI IDs in a future mass transition or upon customer request.

(9) An LSP may elect to reassume provisioning of POLR service from the LSP affiliate by filing a reversion notice with the commission and notifying ERCOT at least 30 days in advance.

(l) Mass transition of customers to POLR providers. The transfer of customers to POLR providers must [~~shall~~] be consistent with this subsection.

(1) ERCOT must [~~shall~~] first transfer customers to VREPs, up to the number of ESI IDs that each VREP has offered to serve for each customer class in the POLR area. ERCOT must [~~shall~~] use the VREP list to assign ESI IDs to the VREPs in a non-discriminatory manner, before assigning customers to the LSPs. A VREP must [~~shall~~] not be assigned more ESI IDs than it has indicated it is willing to serve pursuant to subsection (i) of this section. To ensure non-discriminatory assignment of ESI IDs to the VREPs, ERCOT must [~~shall~~]:

(A) Sort ESI IDs by POLR area;

(B) Sort ESI IDs by customer class;

(C) Sort ESI IDs numerically;

(D) Sort VREPs numerically by randomly generated number; and

(E) Assign ESI IDs in numerical order to VREPs, in the order determined in subparagraph (D) of this paragraph, in accordance with the number of ESI IDs each VREP indicated a willingness to serve pursuant to subsection (i) of this section. If the number of ESI IDs is less than the total that the VREPs indicated that they are willing to serve, each VREP must [~~shall~~] be assigned a proportionate number of ESI IDs, as calculated by dividing the number that each VREP indicated it was willing to serve by the total that all VREPs indicated they were willing to serve, multiplying the result by the total number of ESI IDs being transferred to the VREPs, and rounding to a whole number.

(2) If the number of ESI IDs exceeds the amount the VREPs are designated to serve, ERCOT must [~~shall~~] assign remaining ESI IDs to LSPs in a non-discriminatory fashion, in accordance with their percentage of market share based upon retail sales in megawatt-hours, on a random basis within a class and POLR area, except that a VREP that is also an LSP that volunteers to serve at least 1% of its market share for a class of customers in a POLR area must [~~shall~~] be exempt from the LSP allocation up to 1% of the class and POLR area. To ensure non-discriminatory assignment of ESI IDs to the LSPs, ERCOT must [~~shall~~]:

(A) Sort the ESI IDs in excess of the allocation to VREPs, by POLR area;

(B) Sort ESI IDs in excess of the allocation to VREPs, by customer class;

(C) Sort ESI IDs in excess of the allocation to VREPs, numerically;

(D) Sort LSPs, except LSPs that volunteered to serve 1% of their market share as a VREP, numerically by MWhs served;

(E) Assign ESI IDs that represent no more than 1% of the total market for that POLR area and customer class less the ESI IDs assigned to VREPs that volunteered to serve at least 1% of their market share for each POLR area and customer class in numerical order to LSPs designated in subparagraph (D) of this paragraph, in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs;

(F) Sort LSPs, including any LSPs previously excluded under subparagraph (D) of this paragraph; and

(G) Assign all remaining ESI IDs in numerical order to LSPs in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs.

(3) Each mass transition must [~~shall~~] be treated as a separate event.

(m) Rates applicable to POLR service.

(1) A VREP must [~~shall~~] provide service to customers using a market-based, month-to-month product. The VREP must [~~shall~~] use the same market-based, month-to-month product for all customers in a mass transition that are in the same class and POLR area.

(2) Subparagraphs (A)-(C) of this paragraph establish the maximum rate for POLR service charged by an LSP. An LSP may charge a rate less than the maximum rate if it charges the lower rate to all customers in a mass transition that are in the same class and POLR area.

(A) Residential customers. The LSP rate for the residential customer class must [~~shall~~] be determined by the following formula: LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP energy charge) / kWh used Where:

(i) Non-bypassable charges must [~~shall~~] be all TDU charges and credits for the appropriate customer class in the applicable service territory and other charges including ERCOT administrative charges, nodal fees or surcharges, reliability unit commitment (RUC) capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

(ii) LSP customer charge must [~~shall~~] be $0.06 per kWh.

(iii) LSP energy charge must be the average of the actual Real-Time Settlement Point Prices (RTSPPs) for the customer's load zone for the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during that billing period and further multiplied by 120%. [~~LSP energy charge shall be the sum over the billing period of the actual hourly Real-Time Settlement Point Prices (RTSPPs) for the customer's load zone that is multiplied by the number of kWhs the customer used during that hour and that is further multiplied by 120%.~~]

(iv) "Number of kWhs the customer used" is based on interval data. [~~"Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.~~]

~~*(v)*] ["Number of kWhs the customer used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.]~~

~~*(vi)*] [For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone partially or wholly in the customer's TDU service territory that had the highest simple average over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.]~~

(B) Small and medium non-residential customers. The LSP rate for the small and medium non-residential customer classes must [~~shall~~] be determined by the following formula:
LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used
Where:

(i) Non-bypassable charges must [~~shall~~] be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

(ii) LSP customer charge must [~~shall~~] be $0.025 per kWh.

(iii) LSP demand charge must [~~shall~~] be $2.00 per kW, per month, for customers that have a demand meter, and $50.00 per month for customers that do not have a demand meter.

(iv) LSP energy charge must be the average of the actual RTSPPs for the customer's load zone for the previous 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during that billing period an further multiplied by 125%. [~~LSP energy charge shall be the sum over the billing period of the actual hourly RTSPPs, for the customer's load zone that is multiplied by number of kWhs the customer used during that hour and that is further multiplied by 125%.~~]

(v) "Number of kWhs the customer used" is based on interval data. [~~"Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.~~]

~~*f(vi)*] ["Number of kWhs the customer used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.]~~

~~*f(vii)*] [For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.]~~

(C) Large non-residential customers. The LSP rate for the large non-residential customer class must [~~shall~~] be determined by the following formula: LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used Where:

(i) Non-bypassable charges must [~~shall~~] be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.

(ii) LSP customer charge must [~~shall~~] be $2,897.00 per month.

(iii) LSP demand charge must [~~shall~~] be $6.00 per kW, per month.

(iv) LSP energy charge must [~~shall~~] be the appropriate RTSPP, determined on the basis of 15-minute intervals, for the customer multiplied by 125%, multiplied by the level of kilowatt-hours used. The energy charge must [~~shall~~] have a floor of $7.25 per MWh.

(3) If in response to a complaint or upon its own investigation, the commission determines that an LSP failed to charge the appropriate rate prescribed by paragraph (2) of this subsection, and as a result overcharged its customers, the LSP must [~~shall~~] issue refunds to the specific customers who were overcharged.

(4) On a showing of good cause, the commission may permit the LSP to adjust the rate prescribed by paragraph (2) of this subsection, if necessary to ensure that the rate is sufficient to allow the LSP to recover its costs of providing service. Notwithstanding any other commission rule to the contrary, such rates may be adjusted on an interim basis for good cause shown and after at least 10 business days' notice and an opportunity for hearing on the request for interim relief. Any adjusted rate must [~~shall~~] be applicable to all LSPs charging the rate prescribed by paragraph (2) of this subsection to the specific customer class, within the POLR area that is subject to the adjustment.

(5) For transitioned customers, the customer and demand charges associated with the rate prescribed by paragraph (3) of this subsection must [~~shall~~] be pro-rated for partial month usage if a large non-residential customer switches from the LSP to a REP of choice.

(n) Challenges to customer assignments. A POLR provider is not obligated to serve a customer within a customer class or a POLR area for which the REP is not designated as a POLR provider, after a successful challenge of the customer assignment. A POLR provider must [~~shall~~] use the ERCOT market variance resolution tool to challenge a customer class assignment with the TDU. The TDU must [~~shall~~] make the final determination based upon historical usage data and not premise type. If the customer class assignment is changed and a different POLR provider for the customer is determined appropriate, the customer must [~~shall~~] then be served by the appropriate POLR provider. Back dated transactions may be used to correct the POLR assignment.

(o) Limitation on liability. A [~~The~~] POLR provider must [~~providers shall~~] make reasonable provisions to provide service under this section to any ESI IDs currently receiving the service and to ESI IDs obtained in a future mass transition or served upon customer request; however, liabilities not excused by reason of force majeure or otherwise must [~~shall~~] be limited to direct, actual damages.

(1) Neither the customer nor the POLR provider must [~~shall~~] be liable to the other for consequential, incidental, punitive, exemplary, or indirect damages. These limitations apply without regard to the cause of any liability or damage.

(2) In no event will [~~shall~~] ERCOT or a POLR provider be liable for damages to any REP, whether under tort, contract or any other theory of legal liability, for transitioning or attempting to transition a customer from such REP to the POLR provider to carry out this section, or for marketing, offering or providing competitive retail electric service to a customer taking service under this section from the POLR provider.

(p) REP obligations in a transition of customers to POLR service.

(1) A customer may initiate service with an LSP by requesting such service at the rate prescribed by subsection (m)(2) of this section with any LSP that is designated to serve the requesting customer's customer class within the requesting customer's service area. An LSP cannot refuse a customer's request to make arrangements for POLR service, except as otherwise permitted under this title.

(2) The POLR provider is responsible for obtaining resources and services needed to serve a customer once it has been notified that it is serving that customer. The customer is responsible for charges for service under this section at the rate in effect at that time.

(3) If a REP terminates service to a customer, or transitions a customer to a POLR provider, the REP is financially responsible for

the resources and services used to serve the customer until it notifies the independent organization of the termination or transition of the service and the transfer to the POLR provider is complete.

(4) The POLR provider is financially responsible for all costs of providing electricity to customers from the time the transfer or initiation of service is complete until such time as the customer ceases taking service under this section.

(5) A defaulting REP whose customers are subject to a mass transition event must [~~shall~~] return the customers' deposits within seven calendar days of the initiation of the transition.

(6) ERCOT must [~~shall~~] create a single standard file format and a standard set of customer billing contact data elements that, in the event of a mass transition, must [~~shall~~] be used by the exiting REP and the POLRs to send and receive customer billing contact information. The process, as developed by ERCOT, must [~~shall~~] be tested on a periodic basis. Each REP must [~~All REPs shall~~] submit timely, accurate, and complete files, as required by ERCOT in a mass transition event, as well as for periodic testing. The commission will [~~shall~~] establish a procedure for the verification of customer information submitted by REPs to ERCOT. ERCOT must [~~shall~~] notify the commission if any REP fails to comply with the reporting requirements in this subsection.

(7) When customers are to be transitioned or assigned to a POLR provider, the POLR provider may request usage and demand data, and customer contact information including email, telephone number, and address from the appropriate TDU and from ERCOT, once the transition to the POLR provider has been initiated. Customer proprietary information provided to a POLR provider in accordance with this section must [~~shall~~] be treated as confidential and must [~~shall~~] only be used for mass transition related purposes.

(8) Information from the TDU and ERCOT to the POLR providers must [~~shall~~] be provided in Texas SET format when Texas SET transactions are available. However, the TDU or ERCOT may supplement the information to the POLR providers in other formats to expedite the transition. The transfer of information in accordance with this section must [~~shall~~] not constitute a violation of the customer protection rules that address confidentiality.

(9) A POLR provider may require a deposit from a customer that has been transitioned to the POLR provider to continue to serve the customer. Despite the lack of a deposit, the POLR provider is obligated to serve the customer transitioned or assigned to it, beginning on the service initiation date of the transition or assignment, and continuing until such time as any disconnection request is effectuated by the TDU. A POLR provider may make the request for deposit before it begins serving the customer, but the POLR provider must [~~shall~~] begin providing service to the customer even if the service initiation date is before it receives the deposit - if any deposit is required. A POLR provider must [~~shall~~] not disconnect the customer until the appropriate time period to submit the deposit has elapsed. For the large non-residential customer class, a POLR provider may require a deposit to be provided in three calendar days. For the residential customer class, the POLR provider may require a deposit to be provided after 15 calendar days of service if the customer received 10 days' notice that a deposit was required. For all other customer classes, the POLR provider may require a deposit to be provided in 10 calendar days. The POLR provider may waive the deposit requirement at the customer's request if deposits are waived in a non-discriminatory fashion. If the POLR provider obtains sufficient data, it must [~~shall~~] determine whether a residential customer has satisfactory credit based on the criteria the POLR provider routinely applies to its other residential customers. If the customer has satisfactory credit, the POLR provider must [~~shall~~] not request a deposit from the residential customer.

(A) At the time of a mass transition, the Executive Director or staff designated by the Executive Director will [~~shall~~] distribute available proceeds from an irrevocable stand-by letter of credit in accordance with the priorities established in §25.107(f)(6) of this title. For a REP that has obtained a current list from the Low Income List Administrator (LILA) that identifies low-income customers, these funds must [~~shall~~] first be used to provide deposit payment assistance for that REP's transitioned low-income customers. The Executive Director or staff designee will [~~shall~~], at the time of a transition event, determine the reasonable deposit amount up to $400 per customer ESI ID, unless good cause exists to increase the level of the reasonable deposit amount above $400. Such reasonable deposit amount may take into account factors such as typical residential usage and current retail residential prices, and, if fully funded, must [~~shall~~] satisfy in full the customers' initial deposit obligation to the VREP or LSP.

(B) For a REP that has obtained a current list from the LILA that identifies low-income customers, the Executive Director or the staff designee will [~~shall~~] distribute available proceeds pursuant to §25.107(f)(6) of this title to the VREPs proportionate to the number of customers they received in the mass transition, who at the time of the mass transition were identified as low-income customers by the current LILA list, up to the reasonable deposit amount set by the Executive Director or staff designee. If funds remain available after distribution to the VREPs, the remaining funds must [~~shall~~] be distributed to the appropriate LSPs by dividing the amount remaining by the number of low income customers as identified in the LILA list that are allocated to LSPs, up to the reasonable deposit amount set by the Executive Director or staff designee.

(C) If the funds distributed in accordance with §25.107(f)(6) of this title do not equal the reasonable deposit amount determined, the VREP and LSP may request from the customer payment of the difference between the reasonable deposit amount and the amount distributed. Such difference must [~~shall~~] be collected in accordance with §25.478(e)(3) of this title (relating to Credit Requirements and Deposits).

(D) Notwithstanding §25.478(d) of this title, 90 days after the transition date, the VREP or LSP may request payment of an amount that results in the total deposit held being equal to what the VREP or LSP would otherwise have charged a customer in the same customer class and service area in accordance with §25.478(e) of this title, at the time of the transition.

(10) On the occurrence of one or more of the following events, ERCOT must [~~shall~~] initiate a mass transition to POLR providers[~~,~~] of all of the customers served by a REP:

(A) Termination of the Load Serving Entity (LSE) or Qualified Scheduling Entity (QSE) Agreement for a REP with ERCOT;

(B) Issuance of a commission order recognizing that a REP is in default under the TDU Tariff for Retail Delivery Service;

(C) Issuance of a commission order de-certifying a REP;

(D) Issuance of a commission order requiring a mass transition to POLR providers;

(E) Issuance of a judicial order requiring a mass transition to POLR providers; and

(F) At the request of a REP, for the mass transition of all of that REP's customers.

(11) A REP must [~~shall~~] not use the mass transition process in this section as a means to cease providing service to some cus-

tomers[,] while retaining other customers. A REP's improper use of the mass transition process may lead to de-certification of the REP.

(12) ERCOT may provide procedures for the mass transition process, consistent with this section.

(13) A mass transition under this section must [~~shall~~] not override or supersede a switch request made by a customer to switch an ESI ID to a new REP of choice, if the request was made before a mass transition is initiated. If a switch request has been made but is scheduled for any date after the next available switch date, the switch must [~~shall~~] be made on the next available switch date.

(14) ERCOT must identify customers [~~Customers~~] who are mass transitioned [~~shall be identified~~] for a period of 60 calendar days. The identification must [~~shall~~] terminate at the first completed switch or at the end of the 60-day period, whichever is first. If necessary, ERCOT system changes or new transactions must [~~shall~~] be implemented no later than 14 months from the effective date of this section to communicate that a customer was acquired in a mass transition and is not charged the out-of-cycle meter read pursuant to paragraph (16) of this subsection. To the extent possible, the systems changes should be designed to ensure that the 60-day period following a mass transition, when a customer switches away from a POLR provider, the switch transaction is processed as an unprotected, out-of-cycle switch, regardless of how the switch was submitted.

(15) In the event of a transition to a POLR provider or away from a POLR provider to a REP of choice, the switch notification notice detailed in §25.474(l) of this title (relating to Selection of Retail Electric Provider) is not required.

(16) In a mass transition event, the ERCOT initiated transactions must [~~shall~~] request an out-of-cycle meter read for the associated ESI IDs for a date two calendar days after the calendar date ERCOT initiates such transactions to the TDU. If an ESI ID does not have the capability to be read in a fashion other than a physical meter read, the out-of-cycle meter read may be estimated. An estimated meter read for the purpose of a mass transition to a POLR provider must [~~shall~~] not be considered a break in a series of consecutive months of estimates, but must [~~shall~~] not be considered a month in a series of consecutive estimates performed by the TDU. A TDU must [~~shall~~] create a regulatory asset for the TDU fees associated with a mass transition of customers to a POLR provider pursuant to this subsection. Upon review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset must [~~shall~~] be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary. The TDU must [~~shall~~] not bill, as a discretionary charge, the costs included in this regulatory asset, which must [~~shall~~] consist of the following:

(A) fees for out-of-cycle meter reads associated with the mass transition of customers to a POLR provider; and

(B) fees for the first out-of-cycle meter read provided to a customer who transfers away from a POLR provider, when the out-of-cycle meter read is performed within 60 calendar days of the date of the mass transition and the customer is identified as a transitioned customer.

(17) In the event the TDU estimates a meter read for the purpose of a mass transition, the TDU must [~~shall~~] perform a true-up evaluation of each ESI ID after an actual meter reading is obtained. Within 10 days after the actual meter reading is obtained, the TDU must [~~shall~~] calculate the actual average kWh usage per day for the time period from the most previous actual meter reading occurring prior to the estimate for the purpose of a mass transition to the most current actual meter reading occurring after the estimate for the purpose of mass transition. If the average daily estimated usage sent to the exiting REP is more than 50% greater than or less than the average actual kWh usage per day, the TDU must [~~shall~~] promptly cancel and re-bill both the exiting REP and the POLR using the average actually daily usage.

(q) Termination of POLR service provider status.

(1) The commission may revoke a REP's POLR status after notice and opportunity for hearing:

(A) If the POLR provider fails to maintain REP certification;

(B) If the POLR provider fails to provide service in a manner consistent with this section;

(C) The POLR provider fails to maintain appropriate financial qualifications; or

(D) For other good cause.

(2) If an LSP defaults or has its status revoked before the end of its term, after a review of the eligibility criteria, the commission staff designee will [~~shall~~], as soon as practicable, designate the next eligible REP, if any, as an LSP, based on the criteria in subsection (j) of this section.

(3) At the end of the POLR service term, the outgoing LSP must [~~shall~~] continue to serve customers who have not selected another REP.

(r) Electric cooperative delegation of authority. An electric cooperative that has adopted customer choice may select to delegate to the commission its authority to select POLR providers under PURA §41.053(c) in its certificated service area in accordance with this section. After notice and opportunity for comment, the commission will [~~shall~~], at its option, accept or reject such delegation of authority. If the commission accepts the delegation of authority, the following conditions [~~shall~~] apply:

(1) The board of directors must [~~shall~~] provide the commission with a copy of a board resolution authorizing such delegation of authority;

(2) The delegation of authority must [~~shall~~] be made at least 30 calendar days prior to the time the commission issues a publication of notice of eligibility;

(3) The delegation of authority must [~~shall~~] be for a minimum period corresponding to the period for which the solicitation must [~~shall~~] be made;

(4) The electric cooperative wishing to delegate its authority to designate a [~~an~~] continuous provider must [~~shall~~] also provide the commission with the authority to apply the selection criteria and procedures described in this section in selecting the POLR providers within the electric cooperative's certificated service area; and

(5) If there are no competitive REPs offering service in the electric cooperative certificated area, the commission must [~~shall~~] automatically reject the delegation of authority.

(s) Reporting requirements. Each LSP that serves customers under a rate prescribed by subsection (m)(2) of this section must [~~shall~~] file the following information with the commission on a quarterly basis beginning January of each year in a project established by the commission for the receipt of such information. Each quarterly report must [~~shall~~] be filed within 30 calendar days of the end of the quarter.

(1) For each month of the reporting quarter, each LSP must [~~shall~~] report the total number of new customers acquired by the LSP

under this section and the following information regarding these customers:

(A) The number of customers from whom a deposit was requested pursuant to the provisions of §25.478 of this title, and the average amount of deposit requested;

(B) The number of customers from whom a deposit was received, including those who entered into deferred payment plans for the deposit, and the average amount of the deposit;

(C) The number of customers whose service was physically disconnected pursuant to the provisions of §25.483 of this title (relating to Disconnection of Service) for failure to pay a required deposit; and

(D) Any explanatory data or narrative necessary to account for customers that were not included in either subparagraph (B) or (C) of this paragraph.

(2) For each month of the reporting quarter each LSP must [~~shall~~] report the total number of customers to whom a disconnection notice was issued pursuant to the provisions of §25.483 of this title and the following information regarding those customers:

(A) The number of customers who entered into a deferred payment plan, as defined by §25.480(j) of this title (relating to Bill Payment and Adjustments) with the LSP;

(B) The number of customers whose service was physically disconnected pursuant to §25.483 of this title;

(C) The average amount owed to the LSP by each disconnected customer at the time of disconnection; and

(D) Any explanatory data or narrative necessary to account for customers that are not included in either subparagraph (A) or (B) of this paragraph.

(3) For the entirety of the reporting quarter, each LSP must [~~shall~~] report, for each customer that received POLR service, the TDU and customer class associated with the customer's ESI ID, the number of days the customer received POLR service, and whether the customer is currently the LSP's customer.

(t) Notice of transition to POLR service to customers. When a customer is moved to POLR service, the customer must [~~shall~~] be provided notice of the transition by ERCOT, the REP transitioning the customer, and the POLR provider. The ERCOT notice must [~~shall~~] be provided within two days of the time ERCOT and the transitioning REP know that the customer must [~~shall~~] be transitioned and customer contact information is available. If ERCOT cannot provide notice to customers within two days, it must [~~shall~~] provide notice as soon as practicable. The POLR provider must [~~shall~~] provide the notice required by paragraph (3) of this subsection to commission staff at least 48 hours before it is provided to customers, and must [~~shall~~] provide the notice to transitioning customers as soon as practicable. The POLR provider must [~~shall~~] email the notice to the commission staff members designated for receipt of the notice.

(1) ERCOT notice methods must [~~shall~~] include a postcard [~~post-card~~], containing the official commission seal with language and format approved by the commission. ERCOT must [~~shall~~] notify transitioned customers with an automated phone call [~~phone-call~~] and email to the extent the information to contact the customer is available pursuant to subsection (p)(6) of this section. ERCOT must [~~shall~~] study the effectiveness of the notice methods used and report the results to the commission.

(2) Notice by the REP from which the customer is transferred must [~~shall~~] include:

(A) The reason for the transition;

(B) A contact number for the REP;

(C) A statement that the customer must [~~shall~~] receive a separate notice from the POLR provider that must [~~shall~~] disclose the date the POLR provider must [~~shall~~] begin serving the customer;

(D) Either the customer's deposit plus accrued interest, or a statement that the deposit must [~~shall~~] be returned within seven days of the transition;

(E) A statement that the customer can leave the assigned service by choosing a competitive product or service offered by the POLR provider, or another competitive REP, as well as the following statement: "If you would like to see offers from different retail electric providers, please access www.powertochoose.org, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

(F) For residential customers, notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to another REP, the continuity of service purpose, the option to choose a different competitive provider, and information on competitive markets to be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839);

(G) If applicable, a description of the activities that the REP must [~~shall~~] use to collect any outstanding payments, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP; and

(H) Notice to the customer that after being transitioned to POLR service, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.

(3) Notice by the POLR provider must [~~shall~~] include:

(A) The date the POLR provider began or must [~~shall~~] begin serving the customer and a contact number for the POLR provider;

(B) A description of the POLR provider's rate for service. In the case of a notice from an LSP that applies the pricing of subsection (m)(2) of this section, a statement that the price is generally higher than available competitive prices, that the price is unpredictable, and that the exact rate for each billing period must [~~shall~~] not be determined until the time the bill is prepared;

(C) The deposit requirements of the POLR provider and any applicable deposit waiver provisions and a statement that, if the customer chooses a different competitive product or service offered by the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, a deposit may be required;

(D) A statement that the additional competitive products or services may be available through the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, as well as the following statement: "If you would like to choose a different retail electric provider, please access www.powertochoose.org, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

(E) The applicable Terms of Service and Electricity Facts Label (EFL); and

(F) For residential customers that are served by an LSP under a rate prescribed by subsection (m)(2) of this section, a notice

to the customer that after being transitioned to service from a POLR provider, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.

(u) Market notice of transition to POLR service. ERCOT must [~~shall~~] notify all affected Market Participants and the Retail Market Subcommittee (RMS) email listserv of a mass transition event within the same day of an initial mass-transition call after the call has taken place. The notification must [~~shall~~] include the exiting REP's name, total number of ESI IDs, and estimated load.

(v) Disconnection by a POLR provider. The POLR provider must comply with the applicable customer protection rules as provided for under Subchapter R of this chapter, except as otherwise stated in this section. To ensure continuity of service, service under this section must [~~shall~~] begin when the customer's transition to the POLR provider is complete. A customer deposit is not a prerequisite for the initiation of service under this section. Once service has been initiated, a customer deposit may be required to prevent disconnection. Disconnection for failure to pay a deposit may not occur until after the proper notice and after that appropriate payment period detailed in §25.478 of this title has elapsed, except where otherwise noted in this section.

(w) Deposit payment assistance.

(1) The commission staff designee will [~~shall~~] distribute the deposit payment assistance monies to the appropriate POLRs on behalf of customers as soon as practicable.

(2) The Executive Director or staff designee will [~~shall~~] use best efforts to provide written notice to the appropriate POLRs of the following on or before the second calendar day after the transition:

(A) a list of the ESI IDs identified by the LILA that have been or must [~~shall~~] be transitioned to the applicable POLR (if available); and

(B) the amount of deposit payment assistance that must [~~shall~~] be provided on behalf of a POLR customer identified by the LILA (if available).

(3) Amounts credited as deposit payment assistance pursuant to this section must [~~shall~~] be refunded to the customer in accordance with §25.478(j) of this title.

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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SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE PROVIDERS

16 TAC §§25.471, 25.475, 25.479, 25.498, 25.499

Statutory Authority

The new rule and amendments are 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 §13.305, which establishes a voluntary process for the valuation of utilities or facilities acquired by Class A or Class B utilities.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 17.003, 17.102, 39.101, 39.106, 39.107(g), 39.110, and 39.112.

§25.471. General Provisions of Customer Protection Rules.

(a) Application. This subchapter applies to aggregators and retail electric providers (REPs). In addition, where specifically stated, these rules apply to transmission and distribution utilities (TDUs), the registration agent, brokers and power generation companies. These rules specify when certain provisions are applicable only to some, but not all, of these providers.

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

(3) The rules in this subchapter are minimum, mandatory requirements that must be offered to or complied with for all customers unless otherwise specified. Except for the provisions of §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider), §25.481 of this title (relating to Unauthorized Charges), [~~and~~] §25.485(a)-(b) of this title (relating to Customer Access and Complaint Handling), and §25.499 (relating to Acknowledgement of Risk Requirements for Certain Commercial Contracts), a customer other than a residential or small commercial class customer, or a non-residential customer whose load is part of an aggregation in excess of 50 kilowatts, may agree to terms of service that reflect either a higher or lower level of customer protections than would otherwise apply under these rules. Any agreements containing materially different protections from those specified in these rules must be reduced to writing and provided to the customer. Additionally, copies of such agreements must be provided to the commission upon request.

(4) - (5) (No change.)

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

§25.475. General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers.

(a) Applicability. The requirements of this section apply to retail electric providers (REPs) [~~and aggregators, when specifically stated,~~] in connection with the provision of service and marketing to residential and small commercial customers. When specifically stated, the requirements of this section apply to brokers, aggregators, and transmission and distribution utilities (TDUs). This section is effective for contracts entered into on or after September 1, 2021. [~~This section is effective April 1, 2010.~~] REPs are not required to modify contract documents related to contracts entered into before this date[~~,~~] but must [~~shall~~] provide notice of expiration as required by subsection (e) of this section. Contracts entered into prior to September 1, 2021 must comply with the provisions of this section in effect at the time the contracts were executed.

(b) Definitions. The definitions set forth in §25.5 of this title (relating to Definitions) and §25.471(d) of this title (relating to General Provisions of Customer Protection Rules) apply to this section. In addition, the[~~The~~] following words and terms, when used in this section [~~shall~~] have the following meanings, unless the context indicates otherwise.

(1) Contract -- The Terms of Service document (TOS), the Electricity Facts Label (EFL), Your Rights as a Customer document (YRAC), [~~and~~] the documentation of enrollment pursuant to §25.474 of this title (relating to Selection of Retail Electric Provider), and, if applicable, the Acknowledgement of Risk (AOR).

(2) Contract documents -- The TOS, EFL, [~~and~~] YRAC, and, if applicable, the AOR.

(3) Contract expiration -- The time when the initial term contract is completed. A new contract is initiated when the customer begins receiving service pursuant to the new EFL.

(4) Contract term -- The time period the contract is in effect.

(5) Fixed rate product -- A retail electric product with a term of at least three months for which the price (including all recurring charges and ancillary service charges) for each billing period of the contract term is the same throughout the contract term, except that the price may vary from the disclosed amount solely to reflect actual changes in TDU [~~the Transmission and Distribution Utility (TDU)~~] charges, changes to the Electric Reliability Council of Texas (ERCOT) or Texas Regional Entity, Inc. administrative fees charged to loads or changes resulting from federal, state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control.

(6) Indexed product -- A retail electric product for which the price, including recurring charges, can vary according to a pre-defined pricing formula that is based on publicly available indices or information and is disclosed to the customer, and to reflect actual changes in TDU charges, changes to the ERCOT or Texas Regional Entity, Inc. administrative fees charged to loads or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on a REP that are beyond the REPs control. An indexed product may be for a term of three months or more, or may be a month-to-month contract.

(7) Month-to-month contract -- A contract with a term of 31 days or less. A month-to-month contract may not contain a termination fee or penalty.

(8) Price -- The cost for a retail electric product that includes all recurring charges, including the cost of ancillary services, excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax.

(9) Recurring charge -- A charge for a retail electric product that is expected to appear on a customer's bill in every billing period or appear in three or more billing periods in a twelve month period. A charge is not considered recurring if it will be billed by the TDU and passed on to the customer and will either not be applied to all customers of that class within the TDU territory, or cannot be known until the customer enrolls or requests a specific service.

(10) Term contract -- A contract with a term in excess of 31 days.

(11) Variable price product -- A retail product for which price may vary according to a method determined by the REP, including a product for which the price, can increase no more than a defined percentage as indexed to the customer's previous billing month's price. For residential customers, a variable price product can be only a month-to-month contract.

(12) Wholesale Indexed Product - A retail electric product in which the price a customer pays for electricity includes a direct pass-through of real-time settlement point prices determined by the independent organization certified under the Public Utility Regulatory Act (PURA) §39.151 for the ERCOT power region.

(c) General Retail Electric Provider requirements.

(1) General Disclosure Requirements.

(A) All written, electronic, and oral communications, including advertising, websites, direct marketing materials, billing statements, TOSs, EFLs, YRACs, and, if applicable, AORs [~~YRACs~~] distributed by a REP or aggregator must [~~shall~~] be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. Prohibited communications include, but are not limited to:

(i) Using the term or terms "fixed" to market a product that does not meet the definition of a fixed rate product.

(ii) Suggesting, implying, or otherwise leading someone to believe that a REP or aggregator has been providing retail electric service prior to the time the REP or aggregator was certified or registered by the commission.

(iii) Suggesting, implying or otherwise leading someone to believe that receiving retail electric service from a REP will provide a customer with better quality of service from the TDU.

(iv) Falsely suggesting, implying or otherwise leading someone to believe that a person is a representative of a TDU or any REP or aggregator.

(v) Falsely suggesting, implying or otherwise leading someone to believe that a contract has benefits for a period of time longer than the initial contract term.

(B) Written and electronic communications must [~~shall~~] not refer to laws, including commission rules without providing a link or website address where the text of those rules are available. All printed advertisements, electronic advertising over the Internet, and websites, must [~~shall~~] include the REP's certified name or commission authorized business name, or the aggregator's registered name, and the number of the certification or registration.

(C) The TOS, EFL, [~~and~~] YRAC, and, if applicable, AOR must [~~shall~~] be provided to each customer upon enrollment. Each document must [~~shall~~] be provided to the customer whenever a change is made to the specific document and upon a customer's request, at any time free of charge.

(D) A REP must [~~shall~~] retain a copy of each version of the TOS, EFL, [~~and~~] YRAC, and, if applicable, AOR during the time the plan is in effect for a customer and for four years after the contract ceases to be in effect for any customer. REPs must [~~shall~~] provide such documents at the request of the commission or its staff.

(2) General contracting requirements.

(A) Each [~~A~~] TOS, EFL, YRAC, and, if applicable, AOR must [~~YRAC shall~~] be complete, [~~shall~~] be written in language that is clear, plain and easily understood, and [~~shall~~] be printed in paragraphs of no more than 250 words in a font no smaller than 10 point. References to laws including commission rules in these documents must [~~shall~~] include a link or website [~~internet~~] address to the full text of the applicable law or rule.

(B) Each [~~All~~] contract document must [~~documents shall~~] be available to the commission to post on its customer education website [{]if the REP chooses to post offers to the website[}].

(C) A contract is limited to service to a customer at a location specified in the contract. If the customer moves from the location, the customer is under no obligation to continue the contract at another location. The REP may require a customer to provide evidence that it is moving to another location. There must [~~shall~~] be no early termination fee assessed to the customer as a result of the customer's relocation if the customer provides a forwarding address and, if required, reasonable evidence that the customer no longer occupies the location specified in the contract.

(D) A TOS and EFL must [~~shall~~] disclose the type of product being described, using one of the following terms: fixed rate product, indexed product or a variable price product.

(E) A REP must [~~shall~~] not use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract term of 12 months or less for an existing residential customer or in response to an applicant's request to become a residential customer.

(F) In any dispute between a customer and a REP concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed in favor of the customer.

(G) For a variable price product, the REP must [~~shall~~] disclose on the REP's website and through a toll-free number the current price and, for residential customers, one year price history, or history for the life of the product, if it has been offered less than one year. A REP must [~~shall~~] not rename a product in order to avoid disclosure of price history. The EFL of a variable price product or indexed product must [~~shall~~] include a notice of how the current price and, if applicable, historical price information may be obtained by a customer.

(H) A REP must [~~shall~~] comply with its contracts.

(3) Specific contract requirements.

(A) The contract term must [~~shall~~] be conspicuously disclosed.

(B) The start and end dates of the contract must [~~shall~~] be available to the customer upon request. If the REP cannot determine the start date, the REP may estimate the start date. After the start date is known, the REP must [~~shall~~] specify the end date of the contract by:

(i) specifying a calendar date; or

(ii) referencing [~~reference to~~] the first meter read on or after a specific calendar date.

(C) If a REP specifies a calendar date as the end date, the REP may bill the term contract price through the first meter read on or after the end date of the contract.

(D) Each contract for service must include the terms of the default renewal product that the customer will be automatically enrolled in if the customer does not select another retail electric product before the expiration of the contract term after the customer has received all required expiration notices.

(E) If a REP does not provide proper notice of the expiration of a fixed rate contract and the customer does not select another REP before expiration of the contract term, the REP must continue to serve the customer under the pricing terms of the fixed rate product until the REP provides notice in accordance with applicable requirements of subsection (e)(2)(A)(i) or (ii) of this section or the customer selects another retail electric product.

(F) A REP, aggregator, or broker is prohibited from offering a wholesale indexed product to a residential or small commercial customer.

(G) A REP, aggregator, or broker may enroll a residential or small commercial customer in an indexed product or a product that contains a separate assessment of ancillary service charges only if the REP, aggregator, or broker obtains before the customer's enrollment an AOR in compliance with the requirements of this section.

(4) Website requirements.

(A) Each REP that offers residential retail electric products for enrollment on its website must [~~shall~~] prominently display the EFL for any products offered without a person having to enter any personal information other than zip code and information that allows determination of the type of offer the consumer wishes to review. Person-specific information must [~~shall~~] not be required.

(B) The EFL for each product must [~~shall~~] be printable in no more than a two page format. The EFL, TOS, [~~and~~] YRAC, and, if applicable, AOR for any products offered for enrollment on the website must [~~shall~~] be available for viewing or downloading.

(d) Changes in contract and price and notice of changes. A REP may make changes to the terms and conditions of a contract or to the price of a product as provided for in this section. Changes in term (length) of a contract require the customer to enter into a new contract and may not be made by providing the notice described in paragraph (3) of this subsection.

(1) Contract changes other than price.

(A) A REP may not change the price (other than as allowed by paragraph (2) of this subsection) or contract term of a term contract for a retail electric product[~~,~~] during its term,[~~;~~] but may change any other provision of the contract[~~,~~] with notice under paragraph (3) of this subsection.

(B) A REP may not change the terms and conditions of a month-to-month product, indexed or variable price products, unless it provides notice under paragraph (3) of this subsection.

(2) Price changes.

(A) A REP may only change the price of a fixed rate product, an indexed product, or a variable product consistent with the definitions in this section and according to the product's EFL. Such price changes do not require notice under paragraph (3) of this subsection.

(B) For a fixed rate product, each bill must [~~shall~~] either show the price changes on one or more separate line items, or must [~~shall~~] include a conspicuous notice stating that the amount billed may include price changes allowed by law or regulatory actions.

(C) Each residential bill for a variable price product must [~~shall~~] include a statement informing the customer how to obtain information about the price that will apply on the next bill.

(3) Notice of changes to terms and conditions. A REP must provide written notice to its customers at least 14 days in advance of the date that the change in the contract will be applied to the customer's bill or take effect. Notice is not required for a change that benefits the customer.

(4) Contents of the notice to change terms and conditions. The notice must [~~shall~~]:

(A) be provided in or with the customer's bill or in a separate document;

(B) include the following statement, "Important notice regarding changes to your contract" clearly and conspicuously in the notice;

(C) identify the change and the specific contract provisions that address the change;

(D) clearly specify what actions the customer needs to take if the customer does not accept the proposed changes to the contract;

(E) state in bold lettering that if the new terms are not acceptable to the customer, the customer may terminate the contract and no termination penalty may [~~shall~~] apply for 14 days from the date

that the notice is sent to the customer but may apply if action is taken after the 14 days have expired. No such statement is required if the customer would not be subject to a termination penalty under any circumstances; and

(F) state in bold lettering that establishing service with another REP may take up to seven business days.

(e) Contract expiration and renewal offers. [~~The REP shall send a written notice of contract expiration at least 30 days or one billing cycle prior to the date of contract expiration, but no more than 60 days or two billing cycles in advance of contract expiration for a residential customer, and at least 14 days but no more than 60 days or two billing cycles in advance of contract expiration for a small commercial customer. The REP shall send the notice by mail to a residential customer or shall send the required notice to a customer's e-mail address if available to the REP and if the customer has requested to receive contract-related notices electronically. The REP shall send the notice to a small commercial customer by mail or may send the notice to the customer's e-mail address if available to the REP and, if the customer has requested to receive contract-related notices electronically. Nothing in this section shall preclude a REP from offering a new contract to the customer at any other time during the contract term.~~]

(1) Notice Timeline for Expiration of a Non-Fixed Rate Term Product. For term products other than fixed rate products, the REP must send a written notice of contract expiration at least 30 days or one billing cycle prior to the date of contract expiration, but no more than 60 days or two billing cycles in advance of contract expiration for a residential customer, and at least 14 days but no more than 60 days or two billing cycles in advance of contract expiration for a small commercial customer. The REP must send the notice by mail to a residential customer or must send the required notice to a customer's e-mail address if available to the REP and if the customer has requested to receive contract-related notices electronically. The REP must send the notice to a small commercial customer by mail or may send the notice to the customer's e-mail address if available to the REP and, if the customer has requested to receive contract-related notices electronically. Nothing in this section precludes a REP from offering a new contract to the customer at any other time during the contract term.

(2) Notice Timeline for Expiration of a Fixed Rate Product.

(A) For fixed rate products, the REP must provide the customer with at least three written notices of the date the fixed rate product will expire. The notices must be provided during the last third of the fixed rate contract period and in intervals that allow for, as practicable, even distribution of the notices throughout the last third of the fixed rate contract period. For fixed rate contracts for a period:

(i) Of more than four months, the final notice must be provided at least 30 days before the date the fixed rate contact will expire.

(ii) Of four or fewer months, the final notice must be provided at least 15 days before the date the fixed rate contract will expire.

(B) The notices must be provided to the customer by mail at the customer's billing address, unless the customer has opted to receive communications electronically from the REP.

(C) If a REP does not provide the required notice of the expiration of a customer's fixed rate contract and the customer does not select another retail electric product before expiration of the fixed rate contract term, the REP must continue serving the customer under the terms of the fixed rate contract until sufficient expiration notice is provided or the customer selects another retail electric product.

[~~(1) Contract Expiration.~~]

[~~(A) If a customer takes no action in response to a notice of contract expiration for the continued receipt of retail electric service upon the contract's expiration, the REP shall serve the customer pursuant to a default renewal product that is a month-to-month product.~~]

[~~(B) Written notice of contract expiration shall be provided in or with the customer's bill, or in a separate document.~~]

[~~(i)~~] ~~If notice is provided with a residential customer's bill, the notice shall be printed on a separate page. A statement shall be included on the outside of the envelope sent to a residential customer's billing address by mail and in the subject line on the e-mail (if the REP sends the notice by e-mail) that states, "Contract Expiration Notice. See Enclosed."~~]

[~~(ii)~~] ~~If the notice is provided in or with a small commercial customer's bill, the REP must include a statement on the outside of the billing envelope or in the subject line of an electronic bill that states, "Contract Expiration Notice" or "Contract Expiration Notice. See Enclosed."; or~~]

[~~(iii)~~] ~~If notice is provided in a separate document, a statement shall be included on the outside of the envelope and in the subject line of the e-mail (if customer has agreed to receive official documents by e-mail) that states, "Contract Expiration Notice. See Enclosed." for residential customers or for small commercial customers, "Contract Expiration Notice" or "Contract Expiration Notice. See Enclosed."~~]

[~~(C) A written notice of contract expiration (whether with the bill or in a separate envelope) shall set out the following:~~]

[~~(i)~~] ~~The date as provided for in subsection (c)(3)(B) of this section that the existing contract will expire.~~]

[~~(ii)~~] ~~If the REP provided a calendar date as the end date for the contract, a statement in bold lettering no smaller than 12 point font that no termination penalty shall apply to residential and small commercial customers 14 days prior to the date stated as the expiration date in the notice. In addition, a description of any fees or charges associated with the early termination of a residential customer's fixed rate product that would apply before 14 days prior to the date stated as the expiration date in the notice must be provided. No such statements are required if the original contract did not contain a termination fee.~~]

[~~(iii)~~] ~~If the REP defined the contract end date by reference to the first meter read on or after a specific calendar date, a statement in bold lettering no smaller than 12 point font that no termination penalty shall apply to residential customers after receipt of the contract expiration notice, or that no termination penalty shall apply to small commercial customers for 14 days prior to the contract end date. No such statement is required if the original contract did not contain a termination fee.~~]

[~~(iv)~~] ~~A description of any renewal offers the REP chooses to make available to the customer and the location of the TOS and EFL for each of those products and a description of actions the customer needs to take to continue to receive service from the REP under the terms of any of the described renewal offers and the deadline by which actions must be taken.~~]

[~~(v)~~] ~~A copy of the EFL for the default renewal product if the customer takes no action, or if the EFL is not included with the contract expiration notice, the REP must provide the EFL to the customer at least 14 days before the expiration of the contract using the same delivery method as was used for the notice. The contract expiration notice must specify how and when the EFL will be made available to the customer.~~]

~~*[(vi)* A statement that if the customer takes no action, service to the customer will continue pursuant to the EFL for the default renewal product that shall be included as part of the notice of contract expiration. The TOS for the default renewal product shall be included as part of the notice, unless the TOS applicable to the customer's existing service also applies to the default renewal product.]~~

~~*[(vii)* A statement that the default service is month-to month and may be cancelled at any time with no fee.]~~

~~[(2) Affirmative consent. A customer that is currently receiving service from a REP may be reenrolled with the REP for service with the same product under which the customer is currently receiving service, or a different product, by conducting an enrollment pursuant to §25.474 of this title or by obtaining the customer's consent in a recording, electronic document, or written letter of authorization consistent with the requirements of this subsection. Affirmative consent is not required when a REP serves the customer under a default renewal product pursuant to paragraph (1) of this subsection. Each recording, electronic document, or written consent form must:]~~

~~[(A) Indicate the customer's name, billing address, service address (for small commercial customers, the ESI ID may be used rather than the service address);]~~

~~[(B) Indicate the identification number of the TOS and EFL under which the customer will be served;]~~

~~[(C) Indicate if the customer has received, or when the customer will receive copies of the TOS, EFL and YRAC;]~~

~~[(D) Indicate the price(s) which the customer is agreeing to pay;]~~

~~[(E) Indicate the date or estimated date of the re-enrollment, the contract term, and the estimated start and end dates of contract term;]~~

~~[(F) Affirmatively inquire whether the customer has decided to enroll for service with the product, and contain the customer's affirmative response; and]~~

~~[(G) Be entirely in plain, easily understood language, in the language that the customer has chosen for communications.]~~

(3) Contract Expiration.

(A) If a customer takes no action in response to the final notice of contract expiration for the continued receipt of retail electric service upon the contract's expiration, the REP must serve the customer pursuant to a default renewal product that is a month-to-month product that the customer may cancel at any time without a fee. The month-to-month product price may vary between billing cycles based on clear terms designed to be easily understood by the average customer.

(B) Written notice of contract expiration must be provided in or with the customer's bill, or in a separate document.

(i) If notice is provided with a residential customer's bill, the notice must be printed on a separate page. A statement must be included in a manner readily visible on the outside of the billing envelope sent to a residential customer's billing address by mail and in the subject line on the e-mail (if the REP sends the notice by e-mail) that states, "Contract Expiration Notice. See Enclosed."

(ii) If the notice is provided in or with a small commercial customer's bill, the REP must include a statement in a manner readily visible on the outside of the billing envelope or in the subject line of an electronic bill that states, "Contract Expiration Notice" or "Contract Expiration Notice. See Enclosed."; or

(iii) If notice is provided in a separate document, a statement must be included in a manner readily visible on the outside of the envelope and in the subject line of the e-mail (if customer has agreed to receive official documents by e-mail) that states, "Contract Expiration Notice. See Enclosed." for residential customers or for small commercial customers, "Contract Expiration Notice. See Enclosed."

(C) A written notice of contract expiration (whether with the bill or in a separate envelope) must set out the following:

(i) The date, in boldfaced and underlined text, as provided for in subsection (c)(3)(B) of this section that the existing contract will expire.

(ii) If the REP provided a calendar date as the end date for the contract, a statement in bold lettering no smaller than 12 point font that no termination penalty must apply to residential and small commercial customers 14 days prior to the date stated as the expiration date in the notice. In addition, a description of any fees or charges associated with the early termination of a residential customer's fixed rate product that would apply before 14 days prior to the date stated as the expiration date in the notice must be provided. No such statements are required if the original contract did not contain a termination fee.

(iii) If the REP defined the contract end date by reference to the first meter read on or after a specific calendar date, a statement in bold lettering no smaller than 12 point font that no termination penalty applies to residential customers for 14 days prior to the date provided as the "on or after" date included in connection with the first meter read language referenced in the notice, or that no termination penalty applies to small commercial customers for 14 days prior to the contract end date. No such statement is required if the original contract did not contain a termination fee.

(iv) A description of any renewal offers the REP chooses to make available to the customer and the location of the TOS and EFL for each of those products and a description of actions the customer needs to take to continue to receive service from the REP under the terms of any of the described renewal offers and the deadline by which actions must be taken.

(v) The final notice provided pursuant to subsection (e)(3) of this section must include a copy of the EFL for the default renewal product if the customer takes no action or if the EFL is not included with the contract expiration notice, the REP must provide the EFL to the customer at least 14 days before the expiration of the contract using the same delivery method as was used for the notice. The contract expiration notice must specify how and when the EFL will be made available to the customer.

(vi) A statement that if the customer takes no action, service to the customer will continue pursuant to the EFL for the default renewal product that must be included as part of the notice of contract expiration. The TOS for the default renewal product must be included as part of the notice, unless the TOS applicable to the customer's existing service also applies to the default renewal product.

(vii) The final notice provided pursuant to subsection (e)(3) of this section must include a statement that the default service is month-to month and may be cancelled at any time with no fee.

(4) Affirmative consent. A customer that is currently receiving service from a REP may be re-enrolled with the REP for service with the same product under which the customer is currently receiving service, or a different product, by conducting an enrollment pursuant to §25.474 of this title or by obtaining the customer's consent in a recording, electronic document, or written letter of authorization consistent with the requirements of this subsection. Affirmative consent is not required when a REP serves the customer under a default renewal product

pursuant to paragraph (1) of this subsection. Each recording, electronic document, or written consent form must:

(A) Indicate the customer's name, billing address, and service address (for small commercial customers, the ESI ID may be used rather than the service address);

(B) Indicate the identification number of the TOS and EFL under which the customer will be served;

(C) Indicate if the customer has received, or when the customer will receive copies of the TOS, EFL,YRAC, and, if applicable, AOR;

(D) Indicate the price(s) which the customer is agreeing to pay;

(E) Indicate the date or estimated date of the re-enrollment, the contract term, and the estimated start and end dates of contract term;

(F) Affirmatively inquire whether the customer has decided to enroll for service with the product, and contain the customer's affirmative response; and

(G) Be entirely in plain, easily understood language, in the language that the customer has chosen for communications.

(f) Terms of service document. The following information must [~~shall~~] be conspicuously contained in the TOS:

(1) Identity and contact information. The REP's certified name and business name (dba) (if applicable), mailing address, e-mail and Internet address (if applicable), certification number, and a toll-free telephone number (with hours of operation and time-zone reference).

(2) Pricing and payment arrangements.

(A) Description of the amount of any routine non-recurring charges resulting from a move-in or switch that may be charged to the customer, including but not limited to an out-of-cycle meter read, and connection or reconnection fees;

(B) For small commercial customers, a description of the demand charge and how it will be applied, if applicable;

(C) An itemization, including name and cost, of any non-recurring charges for services that may be imposed on the customer for the retail electric product, including an application fee, charges for default in payment or late payment, and returned checks charges;

(D) A description of any collection fees or costs that may be assessed to the customer by the REP and that cannot be quantified in the TOS; and

(E) A description of payment arrangements and bill payment assistance programs offered by the REP.

(3) Deposits. If the REP requires deposits from its customers:

(A) a description of the conditions that will trigger a request for a deposit;

(B) the maximum amount of the deposit or the manner in which the deposit amount will be determined;

(C) a statement that interest will be paid on the deposit at the rate approved by the commission, and the conditions under which the customer may obtain a refund of a deposit;

(D) an explanation of the conditions under which a customer may establish satisfactory credit pursuant to §25.478 of this title (relating to Credit Requirements and Deposits); and

(E) if applicable, the customer's right to post a letter of guarantee in lieu of a deposit pursuant to §25.478(i) of this title.

(4) Rescission, Termination and Disconnection.

(A) In a conspicuous and separate paragraph or box:

(i) A description of the right of a customer, for switch requests, to rescind service without fee or penalty of any kind within three federal business days after receiving the TOS, pursuant to §25.474 of this title; and

(ii) Detailed instructions for rescinding service, including the telephone number and, if available, facsimile number or e-mail address that the customer may use to rescind service.

(B) A statement as to how service can be terminated and any penalties that may apply;

(C) A statement of customer's ability to terminate service without penalty if customer moves to another premises and provides evidence that it is moving, if required, and a forwarding address; and

(D) If the REP has disconnection authority, pursuant to §25.483 of this title (relating to Disconnection of Service), a statement that the REP may order disconnection of the customer for non-payment.

(5) Antidiscrimination. A statement informing the customer that the REP cannot deny service or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in an [a] economically distressed geographic area, or qualification for low income or energy efficiency services. For residential customers, a statement informing the customer that the REP cannot use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract term of 12 months or less.

(6) Other terms. Any other material terms and conditions, including exclusions, reservations, limitations of liability, or special equipment requirements, that are a part of the contract for the retail electric product.

(7) Contract expiration notice. For a term contract, the TOS must [~~shall~~] contain a statement informing the customer that a contract expiration notice will be sent at least 14 days prior to the end of the initial contract term. The TOS must [~~shall~~] also state that if the customer fails to take action to ensure the continued receipt of retail electric service upon the contract's expiration, the customer will continue to be served by the REP automatically pursuant to a default renewal product, which must [~~shall~~] be a month-to-month product.

(8) A statement describing the conditions under which the contract can change and the notice that will be provided if there is a change.

(9) Version number. A REP must [~~shall~~] assign an identification number to each version of its TOS, and must [~~shall~~] publish the number on the terms of service document.

(g) Electricity Facts Label. The EFL must [~~shall~~] be unique for each product offered and must [~~shall~~] include the information required in this subsection. Nothing in this subsection precludes a REP from charging a price that is less than its EFL would otherwise provide.

(1) Identity and contact information. The REP's certified name and business name (dba) (if applicable), mailing address, e-mail and Internet address (if applicable), certification number, and a toll-free telephone number (with hours of operation and time-zone reference).

(2) Pricing disclosures. Pricing information must [~~shall~~] be disclosed by a REP in an EFL. The EFL must [~~shall~~] state specifically whether the product is a fixed rate, variable price or indexed product.

(A) For a fixed rate product, the EFL must [~~shall~~] provide the total average price for electric service reflecting all recurring charges, excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax, to the customer.

(B) For an indexed product, the EFL must [~~shall~~] provide sample prices for electric service reflecting all recurring charges, excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax, resulting from a reasonable range of values for the inputs to the pre-defined pricing formula.

(C) For a variable price product, the EFL must [~~shall~~] provide the total average price for electric service for the first billing cycle reflecting all recurring charges, including any TDU charges that may be passed through and excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax, to the customer. Actual changes in TDU charges, changes to the ERCOT or Texas Regional Entity administrative fees charge to loads or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on a REP that were not implemented prior to the issuance of the EFL and were not included in the average price calculation may be directly passed through to customers beginning with the customer's first billing cycle.

(D) The total average price for electric service must [~~shall~~] be expressed in cents per kilowatt hour, rounded to the nearest one-tenth of one cent for the following usage levels:

(i) For residential customers, 500, 1,000 and 2,000 kilowatt hours per month; and

(ii) For small commercial customers, 1,500, 2,500, and 3,500 kilowatt hours per month. If demand charges apply assume a 30 percent load factor.

(E) If a REP combines the charges for retail electric service with charges for any other product, the REP must [~~shall~~]:

(i) If the electric product is sold separately from the other products, disclose the total price for electric service separately from other products; and

(ii) If the REP does not permit a customer to purchase the electric product without purchasing the other products or services, state the total charges for all products and services as the price of the total electric service. If the product has a one-time cost up front, for the purposes of the average price calculation, the cost of the product may be figured in over a 12-month period with 1/12 of the cost being attributed to a single month.

(F) The following must [~~shall~~] be included on the EFL for specific product types:

(i) For indexed products, the formula used to determine an indexed product, including a website and phone number customers may contact to determine the current price.

(ii) For a variable price product that increases no more than a defined percentage as indexed to the customer's previous billing month's price, a notice in bold type no smaller than 12 point font: "Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may increase by no more than {insert percentage} percent from month-to-month." For residential customers, the following additional statement is required: "Please review the historical price of this product available at {insert specific website address and toll-free telephone number}." In the disclosure chart, the box describing whether the price can change during the contract period must [~~shall~~] include the following statement: "The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity, Inc. administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control."

(iii) For all other variable price products, a notice in bold type no smaller than 12 point font: "Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may change in subsequent months at the sole discretion of {insert REP name}. In the disclosure chart, the box describing whether the price can change during the contract period must [~~shall~~] include the following statement: "The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity, Inc. administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control." For residential customers, the following additional statement is required: "Please review the historical price of this product available at {insert specific website address and toll-free telephone number}."

(3) Fee Disclosures.

(A) If the customer [~~customers~~] may be subject to a special charge for underground service or any similar charge that applies only in a part of the TDU service area, the EFL must [~~shall~~] include a statement in the electricity price section that some customers will be subject to a special charge that is not included in the total average price for electric service and must [~~shall~~] disclose how the customer can determine the price and applicability of the special charge.

(B) A listing of all fees assessed by the REP that may be charged to the customer and whether the fee is included in the recurring charges.

(4) Term Disclosure. EFL must [~~shall~~] include disclosure of the length of term, minimum service term, if any, and early termination penalties, if any.

(5) Renewable Energy Disclosures. The EFL must [~~shall~~] include the percentage of renewable energy of the electricity product and the percentage of renewable energy of the statewide average generation mix.

(6) Format of Electricity Facts Label. REPs must use the following format for the EFL with the pricing chart and disclosure chart shown. The additional language is for illustrative purposes. It does not include all reporting requirements as outlined above. Such subsections should be referred to for determination of the required reporting items on the EFL. Each EFL must [~~shall~~] be printed in type no smaller than ten points in size, unless a different size is specified in this section, and must [~~shall~~] be formatted as shown in this paragraph:
Figure: 16 TAC § 25.475(g)(6)
[~~Figure:~~ ~~16 TAC § 25.475(g)(6)~~]

(7) Version number. A REP must [~~shall~~] assign an identification number to each version of its EFL, and must [~~shall~~] publish the number on the EFL.

(h) Your Rights as a Customer disclosure. The information set out in this section must [~~shall~~] be included in a REP's "Your Rights as a Customer" document in plain language, to summarize the standard customer protections provided by this subchapter or additional protections provided by the REP.

(1) A YRAC document must [~~shall~~] be consistent with the TOS for the retail product.

(2) The YRAC document must [~~shall~~] inform the customer of the REP's complaint resolution policy pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling) and payment arrangements and deferred payment policies pursuant to §25.480 of this title (relating to Bill Payment and Adjustments).

(3) The YRAC document must [~~shall~~] inform the customer of the REP's procedures for reporting outages and the steps necessary to have service restored or reconnected after an involuntary suspension or disconnection.

(4) The YRAC must provide information the REP has received from the TDU pursuant to PURA §17.003(e) regarding the TDU's procedures for implementing involuntary load shedding initiated by the independent organization certified under PURA §39.151 for the ERCOT power region, and, if applicable, where any additional details regarding those procedures or relevant updates may be located. The REP may fulfill this requirement by providing a website address with the required information. Each TDU must develop such information and resources by September 1, 2021 and make the website address where such information can be viewed available to REPs. A REP may provide this information at a website address other than the website addresses made available by the TDUs. A TDU or other entity providing a website address is required to update this information within 30 days of any material change in the information.

(5) [~~(4)~~] The YRAC document must [~~shall~~] inform the customer of the customer's right to have the meter tested pursuant to §25.124 of this title (relating to Meter Testing), or in accordance with the tariffs of a transmission and distribution utility, a municipally owned utility, or an electric cooperative, as applicable, and the REP's ability in all cases to make that request on behalf of the customer by a standard electronic market transaction, and the customer's right to be instructed on how to read the meter, if applicable.

(6) [~~(5)~~] The YRAC document must [~~shall~~] inform the customer of the availability of:

(A) Financial and energy assistance programs for residential customers;

(B) Any special services such as readers or notices in Braille or TTY;

(C) Special policies or programs available to residential customers designated as chronic condition or critical care under §25.497 of this title and the procedure for a customer to apply to be considered for such designations; and [~~Special policies or programs available to residential customers with physical disabilities, including residential customers who have a critical need for electric service to maintain life support systems; and~~]

(D) Any available discounts that may be offered by the REP for qualified low-income residential customers. A REP may comply with this requirement by providing the customer with instructions for how to inquire about such discounts.

(7) [~~(6)~~] The YRAC document must [~~shall~~] inform the customer of the following customer rights and protections:

(A) Unauthorized switch protections applicable under §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider);

(B) The customer's right to dispute unauthorized charges on the customer's bill as set forth in §25.481 of this title (relating to Unauthorized Charges);

(C) Protections relating to disconnection of service pursuant to §25.483 of this title;

(D) Non-English language requirements pursuant to §25.473 of this title (relating to Non-English Language Requirements);

(E) Availability of a Do Not Call List pursuant to §25.484 of this title (relating to Electric No-Call List) and §26.37 of this title (relating to Texas No-Call List); and

(F) Privacy rights regarding customer proprietary information as provided by §25.472 of this title (relating to Privacy of Customer Information).

(8) [~~(7)~~] Identity and contact information. The REP's certified name and business name (dba), certification number, mailing address, e-mail and Internet address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference) at which the customer may obtain information concerning the product.

(i) Advertising claims. If a REP or aggregator advertises or markets the specific benefits of a particular electric product, the REP or aggregator must [~~shall~~] provide the name of the electric product offered in the advertising or marketing materials to the commission or its staff, upon request. All advertisements and marketing materials distributed by or on behalf of a REP or aggregator must [~~shall~~] comply with this section. REPs and aggregators are responsible for representations to customers and prospective customers by employees or other agents of the REP concerning retail electric service that are made through advertising, marketing or other means.

(1) Print advertisements. Print advertisements and marketing materials, including direct mail solicitations that make any claims regarding price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP must [~~shall~~] include the EFL of the REP making the claim. In lieu of including an EFL, the following statement must [~~shall~~] be provided: "You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number, and Internet address (if available) of the REP)." If the REPs phone number or website address is included on the advertisement, such phone number or website address is not required in the disclaimer statement. Upon request, a REP must [~~shall~~] provide to the commission the contract documents relating to a product being advertised and any information used to develop or substantiate comparisons made in the advertisement.

(2) Television, radio, and internet advertisements. A REP must [~~shall~~] include the following statement in any television, Internet, or radio advertisement that makes a specific claim about price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP: "You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number and website (if available) of the REP)." If the REPs phone number or website address is included on the advertisement, such phone number or website address is not required in the disclaimer statement. This statement is not required for general statements regarding savings or environmental quality, but must [~~shall~~] be provided if a specific price is included in the advertisement, or if a specific statement about savings or environmental quality compared to another REP is made. Upon request, a REP

must [~~shall~~] provide to the commission the contract documents relating to a product being advertised and any information used to develop or substantiate comparisons made in the advertisement.

(3) Outdoor advertisements. A REP must [~~shall~~] include, in a font size and format that is legible to the intended audience, its certified name or commission authorized business name, certification number, telephone number and website [Internet address] (if available).

(4) Renewable energy claims. A REP must [~~shall~~] authenticate its sales of renewable energy in accordance with §25.476 of this title (relating to Renewable and Green Energy Verification). If a REP relies on supply contracts to authenticate its sales of renewable energy, it must [~~shall~~] file a report with the commission, not later than March 15 of each year demonstrating its compliance with this paragraph and §25.476 of this title.

(j) Acknowledgement of Risk. Before a residential or small commercial customer's enrollment in an indexed product or a product that contains a separate assessment of ancillary service charges, an aggregator, broker, or retail electric provider must obtain an AOR, signed by the customer, verifying that the customer accepts the potential price risks associated with the product.

(1) for indexed products other than wholesale indexed products the AOR must include the following statement in clear, boldfaced text: "This is an indexed product. I understand that if I enroll in this product, the rate I will be charged for electricity can change for reasons beyond my control. These changes may result in unexpectedly high bills, potentially significantly higher than previous bills, and I must pay any amount I am properly billed. I understand the risks involved with this plan"

(2) for products that contain a separate assessment of ancillary service charges the AOR must include the following statement in clear, boldfaced text: "This product contains a separate assessment of ancillary service charges. I understand that if I enroll in this product, the rate I will be charged for electricity can change for reasons beyond my control. These changes may result in unexpectedly high bills, potentially significantly higher than previous bills, and I must pay any amount I am properly billed. I understand the risks involved with this plan."

§25.479. Issuance and Format of Bills.

(a) Application. This section applies[, ~~beginning April 1, 2010,~~] to a retail electric provider (REP) that is responsible for issuing electric service bills to retail customers, unless the REP is issuing a consolidated bill (both energy services and transmission and distribution services) on behalf of an electric cooperative or municipally owned utility. This section does not apply to a municipally owned utility or electric cooperative issuing bills to its customers in its own service territory.

(b) Frequency and delivery of bills.

(1) A REP must [~~shall~~] issue a bill monthly to each customer, unless service is provided for a period of less than one month. A REP may issue a bill less frequently than monthly if both the customer and the REP agree to such an arrangement.

(2) A bill must [~~Bills shall be~~] be issued no later than 30 days after the REP receives the usage data and any related invoices for non-bypassable charges, unless validation of the usage data and invoice received from a transmission and distribution utility by the REP or other efforts to determine the accuracy of usage data or invoices delay billing by a REP past 30 days. The number of days to issue a bill must [~~shall~~] be extended beyond 30 days to the extent necessary to support agreements between REPs and customers for less frequent billing, as provided in paragraph (1) of this subsection or for consolidated billing.

(3) A REP must [~~shall~~] issue bills to residential customers in writing and delivered via the United States Postal Service. REPs may provide bills to a customer electronically in lieu of written mailings if both the customer and the REP agree to such an arrangement. An affiliated REP or a provider of last resort must [~~shall~~] not require a customer to agree to such an arrangement as a condition of receiving electric service.

(4) A REP must [~~shall~~] not charge a customer a fee for issuing a standard bill, which is a bill delivered via U.S. mail that complies with the requirements of this section. The customer may be charged a fee or given a discount for non-standard billing in accordance with the terms of service document.

(c) Bill content.

(1) Each customer's bill must [~~shall~~] include the following information:

(A) The certified name and address of the REP and the number of the license issued to the REP by the commission;

(B) A toll-free telephone number, in bold-face type, which the customer can call during specified hours for inquiries and to make complaints to the REP about the bill;

(C) A toll-free telephone number that the customer may call 24 hours a day, seven days a week, to report power outages and concerns about the safety of the electric power system;

(D) The service address, electric service identifier (ESI), and account number of the customer;

(E) The service period for which the bill is rendered;

(F) The date on which the bill was issued;

(G) The payment due date of the bill and, if different, the date by which payment from the customer must be received by the REP to avoid a late charge or other collection action;

(H) The current charges for electric service as disclosed in the customer's terms of service document, including applicable taxes and fees labeled "current charges." If the customer is on a level or average payment plan, the level or average payment due must [~~shall~~] be clearly shown in addition to the current charges;

(I) A calculation of the average unit price for electric service for the current billing period, labeled, "The average price you paid for electric service this month." The calculation of the average price for electric service must [~~shall~~] reflect the total of all fixed and variable recurring charges, but not include state and local sales taxes, reimbursement for the state miscellaneous gross receipts tax, and any nonrecurring charges or credits, divided by the kilowatt-hour consumption, and must [~~shall~~] be expressed as a cents per kilowatt-hour amount rounded to the nearest one-tenth of one cent.

(J) The identification and itemization of charges other than for electric service as disclosed in the customer's terms of service document;

(K) The itemization and amount of any non-recurring charge, including late fees, returned check fees, restoration of service fees, or other fees disclosed in the REP's terms of service document provided to the customer;

(L) The balances from the preceding bill, payments made by the customer since the preceding bill, and the amount the customer is required to pay by the due date, labeled "amount due;"

(M) A notice that the customer has the opportunity to voluntarily donate money to the bill payment assistance program, pursuant to §25.480(g)(2) of this title (relating to Bill Payment and Adjustments);

(N) If available to the REP on a standard electronic transaction, if the bill is based on kilowatt-hour (kWh) usage, the following information:

(i) the meter reading at the beginning of the period for which the customer is being billed, labeled "previous meter read," and the meter reading at the end of the period for which the customer is being billed, labeled "current meter read," and the dates of such readings;

(ii) the kind and number of units measured, including kWh, actual kilowatts (kW), or kilovolt ampere (kVa);

(iii) if applicable, billed kW or kVa;

(iv) whether the bill was issued based on estimated usage; and

(v) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill, unless the customer is provided conversion charts;

(O) Any amount owed under a written guarantee agreement, provided the guarantor was previously notified in writing by the REP of an obligation on a guarantee as required by §25.478 of this title (relating to Credit Requirements and Deposits);

(P) A conspicuous notice of any services or products being provided to the customer that have been added since the previous bill;

(Q) Notification of any changes in the customer's prices or charges due to the operation of a variable rate feature previously disclosed by the REP in the customer's terms of service document;

(R) The notice required by §25.481(d) of this title (relating to Unauthorized Charges); and

(S) For residential customers, on the first page of the bill in at least 12-point font the phrase, "for more information about residential electric service please visit www.powertochoose.com."

(2) If a REP separately identifies a charge defined by one of the terms in this paragraph on the customer's bill, then the term in this paragraph must be used to identify that charge, and such term and its definition must [~~shall~~] be easily located on the REP's website and available to a customer free of charge upon request. Nothing in this paragraph precludes a REP from aggregating transmission and distribution utility (TDU) or REP charges. For any TDU charge(s) listed in this paragraph, the amount billed by the REP must [~~shall~~] not exceed the amount of the TDU tariff charge(s). The label for any TDU charge(s) may also identify the TDU that issued the charge(s). A REP may use a different term than a defined term by adding or deleting a suffix, by adding the word "total" to a defined term, where appropriate, changing the use of lower-case or capital letters or punctuation, or using the acceptable abbreviation specified in this paragraph for a defined term. If an abbreviation other than the acceptable abbreviation is used for the term, then the term must also be identified on the customer's bill.

(A) Advanced metering charge -- A charge assessed to recover a TDU's charges for Advanced Metering Systems, to the extent that they are not recovered in a TDU's standard metering charge. Acceptable abbreviation: Advanced Meter.

(B) Competition Transition Charge -- A charge assessed to recover a TDU's charges for nonsecuritized costs associated with the transition to competition. Acceptable abbreviation: Competition Transition.

(C) Energy Efficiency Cost Recovery Factor -- A charge assessed to recover a TDU's costs for energy efficiency programs, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission. Acceptable abbreviation: Energy Efficiency.

(D) Late Payment Penalty -- A charge assessed for late payment in accordance with Public Utility Commission rules.

(E) Meter Charge -- A charge assessed to recover a TDU's charges for metering a customer's consumption, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission.

(F) Miscellaneous Gross Receipts Tax Reimbursement -- A fee assessed to recover the [~~he~~] miscellaneous gross receipts tax imposed on retail electric providers operating in an incorporated city or town having a population of more than 1,000. Acceptable abbreviation: Gross Receipts Reimb.

(G) Nuclear Decommissioning Fee -- A charge assessed to recover a TDU's charges for decommissioning of nuclear generating sites. Acceptable abbreviation: Nuclear Decommission.

(H) PUC Assessment -- A fee assessed to recover the statutory fee for administering the Public Utility Regulatory Act.

(I) Sales tax -- Sales tax collected by authorized taxing authorities, such as the state, cities and special purpose districts.

(J) TDU Delivery Charges -- The total amounts assessed by a TDU for the delivery of electricity to a customer over poles and wires and other TDU facilities not including discretionary charges.

(K) Transmission Distribution Surcharges -- One or more TDU surcharge(s) on a customer's bill in any combination. Surcharges include charges billed as tariff riders by the TDU. Acceptable abbreviation: TDU Surcharges.

(L) Transition Charge -- A charge assessed to recover a TDU's charges for securitized costs associated with the transition to competition.

(3) If the REP includes any of the following terms in its bills, the term must [~~shall~~] be applied in a manner consistent with the definitions, and such term and its definition must [~~shall~~] be easily located on the REP's website and available to a customer free of charge upon request:

(A) Base Charge -- A charge assessed during each billing cycle without regard to the customer's demand or energy consumption.

(B) Demand Charge -- A charge based on the rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, during the billing cycle.

(C) Energy Charge -- A charge based on the electric energy (kWh) consumed.

(4) A REP must [~~shall~~] provide an itemization of charges, including non-bypassable charges, to the customer upon the customer's request and, to the extent that the charges are consistent with the terms set out in paragraph (2), of this subsection, the terms must [~~shall~~] be used in the itemization.

(5) A customer's electric bill must [~~shall~~] not contain charges for electric service from a service provider other than the customer's designated REP.

(6) A REP must [~~shall~~] include on each residential and small commercial billing statement, in boldfaced and underlined type, the date, as provided for in §25.475(c)(3)(B) of this title (relating to General Retail Electric Provider Requirements and Information Disclosure to Residential and Small Commercial Customers) that a fixed rate product will expire.

(7) To the extent that a REP uses the concepts identified in this paragraph in a customer's bill, it must [~~shall~~] use the term set out in this paragraph, and the definitions in this paragraph must [~~shall~~] be easily located on the REP's website. A REP may not use a different term for a concept that is defined in this paragraph.

(A) kW -- Kilowatt, the standard unit for measuring electricity demand, equal to 1,000 watts;

(B) kWh -- Kilowatt-hour, the standard unit for measuring electricity energy consumption, equal to 1,000 watt-hours; and

(8) Notice of contract expiration may be provided in a bill in accordance with §25.475 of this title.

(d) Public service notices. A REP must [~~shall~~], as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP must [~~shall~~] provide these public service notices to its customers on its billing statements, as a separate document issued with its bill, by electronic communication, or by other acceptable mass communication methods, as approved by the commission. Additionally, in April and October of each year, or as otherwise directed by the commission, the REP must provide information to each customer along with the customer's bill about:

(1) The electric utility's procedures for implementing involuntary load shedding initiated by the independent organization certified for the ERCOT power region under PURA §39.151;

(2) The types of customers who may be considered critical care residential customers, critical load industrial customers, or critical load according to commission rules adopted under PURA §38.076;

(3) The procedure for a customer to apply to be considered a critical care customer, a critical load industrial customer, or critical load according to commission rules adopted under PURA §38.076; and

(4) Reducing electricity use at times when involuntary load shedding events may be implemented.

(e) Estimated bills. If a REP is unable to issue a bill based on actual meter reading due to the failure of the TDU, the registration agent, municipally owned utility or electric cooperative to obtain or transmit a meter reading or an invoice for non-bypassable charges to the REP on a timely basis, the REP may issue a bill based on the customer's estimated usage and inform the customer of the reason for the issuance of the estimated bill.

(f) Non-recurring charges. A REP may pass through to its customers all applicable non-recurring charges billed to the REP by a TDU, municipally owned utility, or electric cooperative as a result of establishing, switching, disconnecting, reconnecting, or maintaining service to an applicant or customer. In the event of a meter test, the TDU, municipally owned utility, electric cooperative, and REP must [~~shall~~] comply with the requirements of §25.124 of this title (relating to Meter Testing) or with the requirements of the tariffs of a TDU, municipally owned utility, or electric cooperative, as applicable. The TDU, municipally owned utility, or electric cooperative must [~~shall~~] maintain a record of all meter tests performed at the request of a REP or a REP's customers.

(g) Record retention. A REP must [~~shall~~] maintain monthly billing and payment records for each account for at least 24 months after the date the bill is mailed. The billing records must [~~shall~~] contain sufficient data to reconstruct a customer's billing for a given period. A copy of a customer's billing records may be obtained by that customer on request, and may be obtained once per 12-month period, at no charge.

(h) Transfer of delinquent balances or credits. If the customer has an outstanding balance or credit owed to the customer's current REP that is due from a previous account in the same customer class, then the customer's current REP may transfer that balance to the customer's current account. The delinquent balance and specific account or address must [~~shall~~] be identified as such on the bill. There must [~~shall~~] be no balance transfers between REPs, other than transfer of a deposit, as specified in §25.478(j)(2) of this title.

§25.498. Prepaid Service.

(a) Applicability. This section applies to retail electric providers (REPs) that offer a payment option in which a customer pays for retail service prior to the delivery of service and to transmission and distribution utilities (TDUs) that have installed advanced meters and related systems. A REP may not offer prepaid service to residential or small commercial customers unless it complies with this section. The following provisions do not apply to prepaid service, unless otherwise expressly stated:

(1) §25.479 of this title (relating to Issuance and Format of Bills);

(2) §25.480(b), (e)(3), (h), (i), (j), and (k) of this title (relating to Bill Payment and Adjustments); and

(3) §25.483 of this title (relating to Disconnection of Service), except for §25.483(b)(2)(A) and (B), (d), and (e)(1)-(6) of this title.

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

(1) Connection balance -- A current balance, not to exceed $75 for a residential customer, required to establish prepaid service or reconnect prepaid service following disconnection.

(2) Current balance -- An account balance calculated consistent with subsection (c)(6) of this section.

(3) Customer prepayment device or system (CPDS) -- A device or system that includes metering and communications capabilities that meet the requirements of this section, including a device or system that accesses customer consumption information from a TDU's advanced metering system (AMS). The CPDS may be owned by the REP, and installed by the TDU consistent with subsection (c)(2)-(4) of this section.

(4) Disconnection balance -- An account balance, not to exceed $10 for a residential customer, below which the REP may initiate disconnection of the customer's service.

(5) Landlord -- A landlord or property manager or other agent of a landlord.

(6) Postpaid service -- A payment option offered by a REP for which the customer normally makes a payment for electric service after the service has been rendered.

(7) Prepaid service -- A payment option offered by a REP for which the customer normally makes a payment for electric service before service is rendered.

(8) Prepaid disclosure statement (PDS) -- A document described by subsection (e) of this section.

(9) Summary of usage and payment (SUP) -- A document described by subsection (h) of this section.

(c) Requirements for prepaid service.

(1) A REP must [~~shall~~] file with the commission a notice of its intent to provide prepaid service prior to offering such service. The notice of intent must [~~shall~~] include a description of the type of CPDS the REP will use, and the initial Electricity Facts Label (EFL), Terms of Service (TOS), and PDS for the service. Except as provided in subsection (m) of this section, a REP-controlled CPDS or TDU settlement provisioned meter is required for any prepaid service.

(2) A CPDS that relies on metering equipment other than the TDU meter must [~~shall~~] conform to the requirements and standards of §25.121(e) of this title (relating to Meter Requirements), §25.122 of this title (relating to Meter Records), and section 4.7.3 of the tariff for retail electric delivery service, which is prescribed by §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities).

(3) A TDU may, consistent with its tariff, install CPDS equipment, including meter adapters and collars on or near the TDU's meters. Such installation does not constitute competitive energy services as this term is defined in §25.341(3) of this title (relating to Definitions).

(4) A CPDS must [~~shall~~] not cause harmful interference with the operation of a TDU's meter or equipment, or the performance of any of the TDU's services. If a CPDS interferes with the TDU's meter or equipment, or TDU's services, the CPDS must [~~shall~~] be promptly corrected or removed. A CPDS that relies on communications channels other than those established by the TDU must [~~shall~~] protect customer information in accordance with §25.472 of this title (relating to Privacy of Customer Information).

(5) A REP may choose the means by which it communicates required information to a customer, including an in-home device at the customer's premises, United States Postal Service, email, telephone, mobile phone, or other electronic communications. The means by which the REP will communicate required information to a customer must [~~shall~~] be described in the TOS and the PDS.

(A) A REP must [~~shall~~] communicate time-sensitive notifications required by paragraph (7)(B), (D), and (E) of this subsection by telephone, mobile phone, or electronic means.

(B) A REP must [~~shall~~] , as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP must [~~shall~~] provide these public service notices to its customers by electronic communication, or by other acceptable mass communication methods, as approved by the commission.

(6) A REP must [~~shall~~] calculate the customer's current balance by crediting the account for payments received and reducing the account balance by known charges and fees that have been incurred, including charges based on estimated usage as allowed in paragraph (11)(E) of this subsection.

(A) The REP may also reduce the account balance by:

(i) estimated applicable taxes; and

(ii) estimated TDU charges that have been incurred in serving the customer and that, pursuant to the TOS, will be passed through to the customer.

(B) If the customer's balance reflects estimated charges and taxes authorized by subparagraph (A) of this paragraph, the REP must [~~shall~~] promptly reconcile the estimated charges and taxes with actual charges and taxes, and credit or debit the balance accordingly within 72 hours after actual consumption data or a statement of charges from the TDU is available.

(C) A REP may reverse a payment for which there are insufficient funds available or that is otherwise rejected by a bank, credit card company, or other payor.

(D) If usage sent by the TDU is estimated or the REP estimates consumption according to paragraph (11)(E) of this subsection, the REP must [~~shall~~] promptly reconcile the estimated consumption and associated charges with the actual consumption and associated charges within 72 hours after actual consumption data is available to the REP.

(7) A REP must [~~shall~~]:

(A) on the request of the customer, provide the customer's current balance calculated pursuant to paragraph (6) of this subsection, including the date and time the current balance was calculated and the estimated time or days of paid electricity remaining; and

(B) make the current balance available to the customer either:

(i) continuously, via the internet, phone, or an in-home device; or

(ii) within two hours of the REP's receipt of a customer's balance request, by the means specified in the Terms of Service for making such a request.

(C) communicate to the customer the current price for electric service calculated as required by §25.475(g)(2)(A)-(E) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers);

(D) provide a warning to the customer at least one day and not more than seven days before the customer's current balance is estimated by the REP to drop to the disconnection balance;

(E) provide a confirmation code when the customer makes a payment by credit card, debit card, or electronic check. A REP is not required to provide a confirmation code or receipt for payment sent by mail or electronic bill payment system. The REP must [~~shall~~] provide a receipt showing the amount paid for payment in person. At the customer's request, the REP must [~~shall~~] confirm all payments by providing to the customer the last four digits of the customer's account number or Electric Service Identifier (ESI ID), payment amount, and the date the payment was received;

(F) ensure that a CPDS controlled by the REP does not impair a customer's ability to choose a different REP or any electric service plans offered by the REP that do not require prepayment. When the REP receives notice that a customer has chosen a new REP, the REP must [~~shall~~] take any steps necessary to facilitate the switch on a schedule that is consistent with the effective date stated on the Electric Reliability Council of Texas (ERCOT) enrollment transaction and ERCOT's rules for processing such transactions; and

(G) refund to the customer or an energy assistance agency, as applicable, any unexpended balance from the account

within ten business days after the REP receives the final bill and final meter read from the TDU.

(i) In the case of unexpended funds provided by an energy assistance agency, the REP must [~~shall~~] refund the funds to the energy assistance agency and identify the applicable customer and the customer's address associated with each refund.

(ii) In the case of unexpended funds provided by the customer that are less than five dollars, the REP must [~~shall~~] communicate the unexpended balance to the customer and state that the customer may contact the REP to request a refund of the balance. Once the REP has received the request for refund from the customer, the REP must [~~shall~~] refund the balance within ten business days.

(8) Nothing in this subsection limits a customer from obtaining a SUP.

(9) The communications provided under paragraph (7)(A)-(D) of this subsection and any confirmation of payment as described in paragraph (7)(E) of this subsection, except a receipt provided when the payment is made in person at a third-party payment location, must [~~shall~~] be provided in English or Spanish, at the customer's election.

(10) A REP must [~~shall~~] cooperate with energy assistance agencies to facilitate the provision of energy assistance payments to requesting customers.

(11) A REP must [~~shall~~] not:

(A) tie the duration of an electric service contract to the duration of a tenant's lease;

(B) require, or enter into an agreement with a landlord requiring, that a tenant select the REP as a condition of a lease;

(C) require a connection balance in excess of $75 for a residential customer;

(D) require security deposits for electric service; or

(E) base charges on estimated usage, other than usage estimated by the TDU or estimated by the REP in a reasonable manner for a time period in which the TDU has not provided actual or estimated usage data on a web portal within the time prescribed by §25.130(g) of this title (relating to Advanced Metering) and in which the TDU-provided portal does not provide the REP the ability to obtain on-demand usage data.

(12) A REP providing service must [~~shall~~] not charge a customer any fee for:

(A) transitioning from a prepaid service to a postpaid service, but notwithstanding §25.478(c)(3) of this title (relating to Credit Requirements and Deposits), a REP may require the customer to pay a deposit for postpaid service consistent with §25.478(b) or (c)(1) and (2) of this title and may:

(i) require the deposit to be paid within ten days after issuance of a written disconnection notice that requests a deposit; or

(ii) bill the deposit to the customer.

(B) the removal of equipment; or

(C) the switching of a customer to another REP, or otherwise cancelling or discontinuing taking prepaid service for reasons other than nonpayment, but may charge and collect early termination fees pursuant to §25.475 of this title.

(13) If a customer owes a debt to the REP for electric service, the REP may reduce the customer's account balance by the amount of the debt. Before reducing the account balance, the REP must notify the customer of the amount of the debt and that the customer's account balance will be reduced by the amount of the debt no sooner than 10 days after the notice required by this paragraph is issued.

(14) In addition to the connection balance, a REP may require payment of applicable TDU fees, if any, prior to establishing electric service or reconnecting electric service.

(15) A REP that provides prepaid service to a residential customer must [~~shall~~] not charge an amount for electric service that is higher than the price charged by the POLR in the applicable TDU service territory. The price for prepaid service to a residential customer calculated as required by §25.475(g)(2)(A)-(E) of this title must [~~shall~~] be equal to or lower than at least one of the tests described in subparagraphs (A)-(C) of this paragraph:

(A) The minimum POLR rate for the residential customer class at the 500 kilowatt-hour (kWh), 1,000 kWh, and 2,000 kWh usage levels as shown on the POLR EFL posted on the commission's website for the applicable TDU service territory. When an updated POLR EFL is posted on the commission's website, the REP, at the REP's option, may continue to reference the prior POLR EFL to ensure compliance with this paragraph for prepaid service prices charged during the first 30 days, beginning the date that the updated POLR EFL is posted.

(B) The maximum POLR rate for the residential customer class calculated pursuant to §25.43(m)[~~(l)~~] of this title (relating to Provider of Last Resort (POLR)).

(C) The average POLR rate for the residential customer class at the 500 kWh, 1,000 kWh, and 2,000 kWh usage levels using the formula described in §25.43(m)[~~(l)~~] of this title for the applicable TDU service territory, with the LSP energy charge calculated as the simple average of the RTSPPs over the prior month for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price. For prepaid service prices charged by a REP up to and including the tenth business day of a month, the test may be met by using the average POLR rate calculation for the month preceding the prior month.

(D) For a fixed rate product, the REP must show that the prepaid service prices calculated under §25.475(g)(2)(A), (D)-(E) of this title are equal to or lower than one of the tests described in subparagraphs (A) and (C) of this paragraph at the time the REP makes the offer and provided that the customer accepts the offer within 30 days.

(d) Customer acknowledgement. As part of the enrollment process, a REP must [~~shall~~] obtain the applicant's or customer's acknowledgement of the following statement: "The continuation of electric service depends on your prepaying for service on a timely basis and if your balance falls below {insert dollar amount of disconnection balance}, your service may be disconnected with little notice. Some electric assistance agencies may not provide assistance to customers that use prepaid service." The REP must [~~shall~~] obtain this acknowledgement using any of the authorization methods specified in §25.474 of this title (relating to Selection of Retail Electric Provider).

(e) Prepaid disclosure statement (PDS). A REP must [~~shall~~] provide a PDS contemporaneously with the delivery of the contract documents to a customer pursuant to §25.474 of this title and as required by subsection (f) of this section. A REP must also provide a PDS contemporaneously with any advertisement or other marketing materials not addressed in subsection (f) of this section that include a specific price or cost for prepaid service. The commission may adopt

a form for a PDS. The PDS must [~~shall~~] be a separate document and must [~~shall~~] be at a minimum written in 12-point font, and must [~~shall~~]:

(1) provide the following statement: "The continuation of electric service depends on you prepaying for service on a timely basis and if your current balance falls below the disconnection balance, your service may be disconnected with little notice.";

(2) inform the customer of the following:

(A) the connection balance that is required to initiate or reconnect electric service;

(B) the acceptable forms of payment, the hours that payment can be made, instructions on how to make payments, any requirement to verify payment and any fees associated with making a payment;

(C) when service may be disconnected and the disconnection balance;

(D) that prepaid service is not available to critical care or chronic condition residential customers as these terms are defined in §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers and Chronic Condition Residential Customers);

(E) the means by which the REP will communicate required information;

(F) the availability of deferred payment plans and, if a REP reserves the right to apply a switch-hold while the customer is subject to a deferred payment plan, that a switch-hold may apply until the customer satisfies the terms of the deferred payment plan, and that a switch-hold means the customer will not be able to buy electricity from other companies while the switch-hold is in place;

(G) the availability of energy bill payment assistance, including the disclosure that some electric assistance agencies may not provide assistance to customers that use prepaid service and the statement "If you qualify for low-income status or low-income assistance, have received energy assistance in the past, or you think you will be in need of energy assistance in the future, you should contact the billing assistance program to confirm that you can qualify for energy assistance if you need it."; and

(H) an itemization of any non-recurring REP fees and charges that the customer may be charged.

(3) be prominently displayed in the property management office of any multi-tenant commercial or residential building at which the landlord is acting as an agent of the REP.

(f) Marketing of prepaid services.

(1) This paragraph applies to advertisements conveyed through print, television, radio, outdoor advertising, prerecorded telephonic messages, bill inserts, bill messages, and electronic media other than [~~Internet~~] websites. If the advertisement includes a specific price or cost, the advertisement must [~~shall~~] include in a manner that is clear and conspicuous to the intended audience:

(A) any non-recurring fees, and the total amount of those fees, that will be deducted from the connection balance to establish service;

(B) the following statement, if applicable: "Utility fees may also apply and may increase the total amount that you pay.";

(C) the maximum fee per payment transaction that may be imposed by the REP; and

(D) the following statement: "You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number, and website [Internet address] (if available) of the REP)." If the REP's phone number or website address is already included on the advertisement, the REP need not repeat the phone number or website as part of this required statement. The REP must [~~shall~~] provide the PDS and EFL to a person who requests standardized information for the product.

(2) This paragraph applies to all advertisements and marketing that include a specific price or cost conveyed through [~~Internet~~] websites, direct mail, mass e-mails, and any other media not addressed by paragraphs (1), (3), and (4) of this subsection. In addition to meeting the requirements of §25.474(d)(7) of this title, a REP must [~~shall~~] include the PDS and EFL on [~~Internet~~] websites and in direct mail, mass e-mails, and any other media not addressed by paragraphs (1), (3), and (4) of this subsection. For electronic communications, the PDS and EFL may be provided through a hyperlink.

(3) This paragraph applies to outbound telephonic solicitations initiated by the REP. A REP must [~~shall~~] disclose the following:

(A) information required by paragraph (1)(A)-(C) of this subsection;

(B) when service may be disconnected, the disconnection balance, and any non-TDU disconnection fees;

(C) the means by which the REP will communicate required information; and

(D) the following statement: "You have the right to review standardized documents before you sign up for this product." The REP must [~~shall~~] provide the PDS and EFL to a person who requests standardized information for the product.

(4) This paragraph applies to solicitations in person. In addition to meeting the requirements of §25.474(e)(8) of this title, before obtaining a signature from an applicant or customer who is being enrolled in prepaid service, a REP must [~~shall~~] provide the applicant or customer a reasonable opportunity to read the PDS.

(g) Landlord as customer of record. A REP offering prepaid service to multiple tenants at a location may designate the landlord as the customer of record for the purpose of transactions with ERCOT and the TDU.

(1) For each ESI ID for which the REP chooses to designate the landlord as the customer of record, the REP must [~~shall~~] provide to the TDU the name, service and mailing addresses, and ESI ID, and keep that information updated as required in the TDU's Tariff for Retail Delivery Service.

(2) The REP must [~~shall~~] treat each end-use consumer as a customer for purposes of this subchapter, including §25.471 of this title (relating to General Provisions of Customer Protection Rules). Nothing in this subsection affects a REP's responsibility to provide customer billing contact information to ERCOT in the format required by ERCOT.

(h) Summary of usage and payment (SUP).

(1) A REP must [~~shall~~] provide a SUP to each customer upon the customer's request within three business days of receipt of the request. The SUP must [~~shall~~] be delivered by an electronic means of communications that provides a downloadable and printable record of the SUP or, if the customer requests, by the United States Postal Service. If a customer requests a paper copy of the SUP, a REP may charge a fee for the SUP, which must be specified in the TOS and PDS

provided to the customer. For purposes of the SUP, a billing cycle must [~~shall~~] conform to a calendar month.

(2) A SUP must [~~shall~~] include the following information:

(A) the certified name and address of the REP and the number of the license issued to the REP by the commission;

(B) a toll-free telephone number, in bold-face type, that the customer can call during specified hours for questions and complaints to the REP about the SUP;

(C) the name, meter number, account number, ESI ID of the customer, and the service address of the customer;

(D) the dates and amounts of payments made during the period covered by the summary;

(E) a statement of the customer's consumption and charges by calendar month during the period covered by the summary;

(F) an itemization of non-recurring charges, including returned check fees and reconnection fees; and

(G) the average price for electric service for each calendar month included in the SUP. The average price for electric service must [~~shall~~] reflect the total of all fixed and variable recurring charges, but not including state and local sales taxes, reimbursement for the state miscellaneous gross receipts tax, and any nonrecurring charges or credits, divided by the kilowatt-hour consumption, and must [~~shall~~] be expressed as a cents per kilowatt-hour amount rounded to the nearest one-tenth of one cent.

(3) If a REP separately identifies a charge defined by one of the terms in this paragraph on the customer's SUP, then the term in this paragraph must be used to identify the charge, and such term and its definition must [~~shall~~] be easily located on the REP's website and available to a customer free of charge upon request. Nothing in the paragraph precludes a REP from aggregating TDU or REP charges. For any TDU charge(s) listed in this paragraph, the amount billed by the REP must [~~shall~~] not exceed the amount of the TDU charge(s). The label for any TDU charge(s) may also identify the TDU that issued the charge(s). A REP may use a different term than a defined term by adding or deleting a suffix, adding the word "total" to a defined term, where appropriate, changing the use of lower-case or capital letters or punctuation, or using the acceptable abbreviation specified in this paragraph for a defined term. If an abbreviation other than the acceptable abbreviation is used for the term, then the term must also be identified on the customer's SUP.

(A) Advanced metering charge -- A charge assessed to recover a TDU's charges for Advanced Metering Systems, to the extent that they are not recovered in a TDU's standard metering charge. Acceptable abbreviation: Advanced Meter.

(B) Competition Transition Charge -- A charge assessed to recover a TDU's charges for nonsecuritized costs associated with the transition to competition. Acceptable abbreviation: Competition Transition.

(C) Energy Efficiency Cost Recovery Factor -- A charge assessed to recover a TDU's costs for energy efficiency programs, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission. Acceptable abbreviation: Energy Efficiency.

(D) Late Payment Penalty -- A charge assessed for late payment in accordance with Public Utility Commission rules.

(E) Meter Charge -- A charge assessed to recover a TDU's charges for metering a customer's consumption, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission.

(F) Miscellaneous Gross Receipts Tax Reimbursement -- A fee assessed to recover the miscellaneous gross receipts tax imposed on retail electric providers operating in an incorporated city or town having a population of more than 1,000. Acceptable abbreviation: Gross Receipts Reimb.

(G) Nuclear Decommissioning Fee -- A charge assessed to recover a TDU's charges for decommissioning of nuclear generating sites. Acceptable abbreviation: Nuclear Decommission.

(H) PUC Assessment -- A fee assessed to recover the statutory fee for administering the Public Utility Regulatory Act.

(I) Sales tax -- Sales tax collected by authorized taxing authorities, such as the state, cities and special purpose districts.

(J) TDU Delivery Charges -- The total amounts assessed by a TDU for the delivery of electricity to a customer over poles and wires and other TDU facilities not including discretionary charges.

(K) Transmission Distribution Surcharges -- One or more TDU surcharge(s) on a customer's bill in any combination. Surcharges include charges billed as tariff riders by the TDU. Acceptable abbreviation: TDU Surcharges.

(L) Transition Charge -- A charge assessed to recover a TDU's charges for securitized costs associated with the transition to competition.

(4) If the REP includes any of the following terms in its SUP, the term must [~~shall~~] be applied in a manner consistent with the definitions, and such term and its definition must [~~shall~~] be easily located on the REP's website and available to a customer free of charge upon request:

(A) Base Charge -- A charge assessed during each billing cycle of service without regard to the customer's demand or energy consumption.

(B) Demand Charge -- A charge based on the rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period during the billing cycle.

(C) Energy Charge -- A charge based on the electric energy (kWh) consumed.

(5) Unless a shorter time period is specifically requested by the customer, information provided must [~~shall~~] be for the most recent 12 months, or the longest period available if the customer has taken prepaid service from the REP for less than 12 months.

(6) In accordance with §25.472(b)(1)(D) of this title, a REP must [~~shall~~] provide a SUP to an energy assistance agency within one business day of receipt of the agency's request, and must [~~shall~~] not charge the agency for the SUP.

(i) Deferred payment plans. A deferred payment plan for a customer taking prepaid service is an agreement between the REP and a customer that requires a customer to pay a negative current balance over time. A deferred payment plan may be established in person, by telephone, or online, but all deferred payment plans must [~~shall~~] be confirmed in writing by the REP to the customer.

(1) The REP must [~~shall~~] place a residential customer on a deferred payment plan, at the customer's request:

(A) when the customer's current balance reflects a negative balance of $50 or more during an extreme weather emergency, as

defined in §25.483(j)(1) of this title, if the customer makes the request within one business day after the weather emergency has ended; or

(B) during a state of disaster declared by the governor pursuant to Texas Government Code §418.014 if the customer is in an area covered by the declaration and the commission directs that deferred payment plans be offered.

(2) The REP must [~~shall~~] offer a deferred payment plan to a residential customer who has been underbilled by $50 or more for reasons other than theft of service.

(3) The REP may offer a deferred payment plan to a customer who has expressed an inability to pay.

(4) The deferred payment plan must [~~shall~~] include both the negative current balance and the connection balance.

(5) The customer has the right to satisfy the deferred payment plan before the prescribed time.

(6) The REP may require that:

(A) no more than 50% of each transaction amount be applied towards the deferred payment plan; or

(B) an initial payment of no greater than 50% of the amount due be made, with the remainder of the deferred amount paid in installments. The REP must [~~shall~~] inform the customer of the right to pay the remaining deferred balance by reducing the deferred balance by five equal monthly installments. However, the customer can agree to fewer or more frequent installments. The installments to repay the deferred balance must [~~shall~~] be applied to the customer's account on a specified day of each month.

(7) The REP may initiate disconnection of service if the customer does not meet the terms of a deferred payment plan or if the customer's current balance falls below the disconnection balance, excluding the remaining deferred amount. However, the REP must [~~shall~~] not initiate disconnection of service unless it has provided the customer at least one day's notice that the customer has not met the terms of the plan or, pursuant to subsection (c)(7)(D) of this section, a timely notice that the customer's current balance was estimated to fall below the disconnection balance, excluding the remaining deferred amount.

(8) The REP may apply a switch-hold while the customer is on a deferred payment plan.

(9) A copy of the deferred payment plan must [~~shall~~] be provided to the customer.

(A) The plan must [~~shall~~] include a statement, in clear and conspicuous type, that states, "If you have any questions regarding the terms of this agreement, or if the agreement was made by telephone and you believe this does not reflect your understanding of that agreement, contact (insert name and contact number of REP)."

(B) If a switch-hold will apply, the plan must [~~shall~~] include a statement, in a clear and conspicuous type, that states "By entering into this agreement, you understand that {company name} will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay this past due amount. The switch-hold will be removed after your final payment on this past due amount is processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on."

(C) If the customer and the REP's representative or agent meet in person, the representative must [~~shall~~] read to the customer the statement in subparagraph (A) of this paragraph and, if applicable, the statement in subparagraph (B) of this paragraph.

(D) The plan may include a one-time penalty in accordance with §25.480(c) of this title, but must [~~shall~~] not include a finance charge.

(E) The plan must [~~shall~~] include the terms for payment of deferred amounts, consistent with paragraph (6) of this subsection.

(F) The plan must [~~shall~~] state the total amount to be paid under the plan.

(G) The plan must [~~shall~~] state that a customer's electric service may be disconnected if the customer does not fulfill the terms of the deferred payment plan, or if the customer's current balance falls below the disconnection balance, excluding the remaining deferred amount.

(10) The REP must [~~shall~~] not charge the customer a fee for placing the customer on a deferred payment plan.

(11) The REP, through a standard market process, must [~~shall~~] submit a request to remove the switch-hold, pursuant to §25.480(m)(2) of this title if the customer pays the deferred balance owed to the REP. On the day the REP submits the request to remove the switch-hold, the REP must [~~shall~~] notify the customer that the customer has satisfied the deferred payment plan and that the switch-hold is being removed.

(j) Disconnection of service. As provided by subsection (a)(4) of this section, §25.483 (b)(2)(A) and (B), (d), (e)(1)-(6), and the definition of extreme weather in §25.483(j)(1) of this title apply to prepaid service. In addition to those provisions, this subsection applies to disconnection of a customer receiving prepaid service.

(1) Prohibition on disconnection. A REP must [~~shall~~] not initiate disconnection for a customer's failure to maintain a current balance above the disconnection balance on a weekend day or during any period during which the mechanisms used for payments specified in the customer's PDS are unavailable; or during an extreme weather emergency, as this term is defined in §25.483 of this title, in the county in which the service is provided.

(2) Initiation of disconnection. A REP may initiate disconnection of service when the current balance falls below the disconnection balance, but only if the REP provided the customer a timely warning pursuant to subsection (c)(7)(D) of this section; or when a customer fails to comply with a deferred payment plan, but only if the REP provided the customer a timely warning pursuant to subsection (i)(7) of this section. A REP may initiate disconnection if the customer's current balance falls below the disconnection balance due to reversal of a payment found to have insufficient funds available or is otherwise rejected by a bank, credit card company, or other payor.

(3) Pledge from electric assistance agencies. If a REP receives a pledge, letter of intent, purchase order, or other commitment from an energy assistance agency to make a payment for a customer, the REP must [~~shall~~] immediately credit the customer's current balance with the amount of the pledge.

(A) The REP must [~~shall~~] not initiate disconnection of service if the pledge from the energy assistance agency (or energy assistance agencies) establishes a current balance above the customer's disconnection balance or, if the customer has been disconnected, must [~~shall~~] request reconnection of service if the pledge from the energy assistance agency establishes a current balance for the customer that is at or above the customer's connection balance required for reconnection.

(B) The REP may initiate disconnection of service if payment from the energy assistance agency is not received within 45 days of the REP's receipt of the commitment or if the payment is not sufficient to satisfy the customer's disconnection balance in the case of

a currently energized customer, or the customer's connection balance if the customer has been disconnected for falling below the disconnection balance.

(4) Reconnection of service. Within one hour of a customer establishing a connection balance or any otherwise satisfactory correction of the reasons for disconnection, the REP must [~~shall~~] request that the TDU reconnect service or, if the REP disconnected service using its CPDS, reconnect service. The REP's payment mechanism may include a requirement that the customer verify the payment using a card, code, or other similar method in order to establish a connection balance or current balance above the disconnection balance when payment is made to a third-party processor acting as an agent of the REP.

(k) Service to Critical Care Residential Customers and Chronic Condition Residential Customers. A REP must [~~shall~~] not knowingly provide prepaid service to a customer who is a critical care residential customer or chronic condition residential customer as those terms are defined in §25.497 of this title. In addition, a REP must [~~shall~~] not enroll an applicant who states that the applicant is a critical care residential customer or chronic condition residential customer.

(1) If the REP is notified by the TDU that a customer receiving prepaid service is designated as a critical care residential customer or chronic condition residential customer, the REP must [~~shall~~] diligently work with the customer to promptly transition the customer to postpaid service or another REP in a manner that avoids a service disruption. The REP must [~~shall~~] not charge the customer a fee for the transition, including an early termination or disconnection fee.

(2) If the customer is unresponsive, the REP must [~~shall~~] transfer the customer to a competitively offered, month-to-month postpaid product at a rate no higher than the rate calculated pursuant to §25.43(l)(2)(A) of this title. The REP must [~~shall~~] provide the customer notice that the customer has been transferred to a new product and must [~~shall~~] provide the customer the new product's Terms of Service and Electricity Facts Label.

(l) Compliance period. No later than October 1, 2011, prepaid service offered by a REP pursuant to a new contract to a customer being served using a "settlement provisioned meter," as that term is defined in Chapter 1 of the TDU's tariff for retail delivery service, or using a REP-controlled collar or meter must [~~shall~~] comply with this section. Before October 1, 2011, prepaid service offered by a REP to a customer served using a settlement provisioned meter or REP-controlled collar or meter must [~~shall~~] comply with this section as it currently exists or as it existed in 2010, except as provided in subsection (m) of this section.

(m) Transition of Financial Prepaid Service Customers. A REP may continue to provide a financial prepaid service (*i.e.,* one that does not use a settlement provisioned meter or REP-controlled collar or meter) only to its customer that was receiving financial prepaid service at a particular location on October 1, 2011. A customer who is served by a financial prepaid service must [~~shall~~] be transitioned to a service that complies with the other subsections of this section by the later of October 1, 2011 or sixty days after the customer begins to be served using either a settlement provisioned meter or a REP-controlled collar or meter. The customer must [~~shall~~] be notified by the REP that the customer's current prepaid service will no longer be offered as of a date specified by the REP by the later of either October 1, 2011 or sixty days after the customer begins to be served using either a settlement provisioned meter or REP-controlled collar or meter, as applicable. The REP must [~~shall~~] provide the notification no sooner than 60 days and not less than 30 days prior to the termination of the customer's current prepaid service. The customer must [~~shall~~] be notified that the customer will be moved to a new prepaid service, and the REP must [~~shall~~] transmit an EFL and PDS to the customer with the notification, if the customer does not choose another service or REP.

§25.499. Acknowledgement of Risk Requirements for Certain Commercial Contracts.

(a) Purpose. This section establishes requirements for the offering of wholesale indexed products and products containing separate assessment of ancillary services costs to a customer other than a residential or small commercial customer.

(b) Application. This section applies to all retail electric providers (REPs), aggregators and brokers. This section is effective for enrollments or re-enrollments entered into on or after September 1, 2021. REPs are not required to modify contract documents related to contracts or enrollments entered into before this date.

(c) Definitions. The definitions set forth in §25.5 of this title (relating to Definitions) and §25.471(d) of this title (relating to General Provisions of Customer Protection Rules) apply to this section. In addition, wholesale indexed product, when used in this section, means a retail electric product in which the price a customer pays for electricity includes a direct pass-through of real-time settlement point prices determined by the independent organization certified under the Public Utility Regulatory Act (PURA) §39.151 for the ERCOT power region.

(d) Acknowledgement of Risk (AOR). Before a customer other than a residential or small commercial customer is enrolled in a wholesale indexed product, or a product that contains a separate assessment of ancillary service charges, an aggregator, broker, or REP must obtain an AOR, signed by the customer, verifying that the customer accepts the potential price risks associated with the product.

(1) For Wholesale Indexed Products, the AOR must include the following statement in clear, boldfaced text: "I understand that the volatility and fluctuation of wholesale energy pricing may cause my energy bill to be multiple times higher in a month in which wholesale energy prices are high. I understand that I will be responsible for charges caused by fluctuations in wholesale energy prices."

(2) For products that contain a separate assessment of ancillary service charges the AOR must include the following statement in clear, boldfaced text: "I understand that my energy bill may include a separate assessment of ancillary service charges, which may cause my energy bill to be multiple times higher in a month in which ancillary services charges are high. I understand that I will be responsible for charges caused by fluctuations in ancillary service charges."

(3) An AOR may be included as an addendum to a contract.

(4) A REP, aggregator, or broker must retain a record of the AORs for each customer during the time the applicable plan is in effect and for four years after the contract ceases to be in effect for any customer. A REP must provide such documents at the request of the commission or its staff.

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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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 85. VEHICLE STORAGE FACILITIES

16 TAC §85.722

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 85, §85.722, regarding the Vehicle Storage Facilities Program. These proposed changes are referred to as "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC Chapter 85 implement Texas Occupations Code, Chapter 2303, Vehicle Storage Facilities.

The proposed rule addresses the maximum amounts for vehicle storage and impoundment fees that may be charged by a vehicle storage facility company. The proposed rule increases the allowable vehicle storage facility impoundment fee and daily storage fees in accordance with changes in the Consumer Price Index (CPI) during the preceding state fiscal biennium, as authorized by statute. Pursuant to Texas Occupations Code §2303.1552, the Texas Commission of Licensing and Regulation (Commission) is authorized to adjust the vehicle impound and storage fees based upon changes in the CPI not later than November 1 of every odd-numbered year. The proposed rule, based upon analysis of the CPI during the preceding state fiscal biennium by Department staff, is necessary to comply with the statutory requirements to implement changes in the vehicle impound and storage fees for 2021.

The proposed rule was presented to and discussed by the Towing and Storage Advisory Board at its meeting on July 29, 2021. The Advisory Board did not make any changes to the proposed rule. The Advisory Board voted and recommended that the proposed rule be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rule amends §85.722(d) by reflecting the new maximum amounts for daily storage fees that may be charged by a vehicle storage facility in connection with receipt and storage of a vehicle, as authorized by statute.

The proposed rule amends §85.722(e) by reflecting the new maximum amount for the vehicle impoundment fee that may be charged by a vehicle storage facility in connection with impoundment and custody of a vehicle, as authorized by statute.

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 rules are 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 rules.

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 rules.

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 putting consumers on notice of the increase in fees that would be incurred if a towed vehicle is stored at a VSF. The proposed rule updates the allowable fees for storage and impoundment of vehicles based on the percentage increase in the Consumer Price Index during the previous state fiscal biennium, as authorized by statute. The increase in fees allows vehicle storage facilities to keep pace with inflation and current costs for operating such a facility.

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 will be additional costs to persons who are required to comply with the proposed rules. The statutorily authorized increase in the amount of fees allowed to be charged for vehicle storage and impoundment would have an increased economic cost on those who pay to have a stored vehicle released from a vehicle storage facility. However, the maximum additional amount a person would be required to pay is $0.78 or $1.08 on the first day, depending on the size of the vehicle, and $0.39 or $0.69 each day afterward. This small increase would have a minimal effect, if at all.

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 rules. 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 rules. For each year of the first five years the proposed rules 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 not expand, limit, or repeal an existing regulation.

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

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

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules 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 proposed rule is proposed under Texas Occupations Code, Chapters 51 and 2303, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapters 51 and 2303. No other statutes, articles, or codes are affected by the proposed rule.

§85.722. Responsibilities of Licensee--Storage Fees and Other Charges.

(a) For the purposes of this section, "VSF" includes a garage, parking lot, or other facility that is:

(1) owned by a governmental entity; and

(2) used to store or park at least 10 vehicles each year.

(b) The fees outlined in this section have precedence over any conflicting municipal ordinance or charter provision.

(c) Notification fee.

(1) A VSF may not charge a vehicle owner or authorized representative more than $50 for notification under these rules. If a notification must be published, and the actual cost of publication exceeds 50% of the notification fee, the VSF may recover the additional amount of the cost of publication. The publication fee is in addition to the notification fee.

(2) If a vehicle is removed by the vehicle owner or authorized representative within 24 hours after the date the VSF receives the vehicle, notification is not required by these rules.

(3) If a vehicle is removed by the vehicle owner or authorized representative before notification is sent or within 24 hours from the time VSF receives the vehicle, the VSF may not charge a notification fee to the vehicle owner.

(d) Daily storage fee. A VSF may charge $20 for each day or part of a day for storage of a vehicle that is 25 feet or less in length and may charge $35 for each day or part of a day for storage of a vehicle that exceeds 25 feet in length, subject to a biennial adjustment as set forth in Texas Occupations Code §2303.1552(b)(1).

(1) Per the 2021 [~~2019~~] biennial adjustment, the maximum amount that a VSF may charge for a daily storage fee is as follows:

(A) Vehicle that is 25 feet or less in length: $21.03 [~~$20.64~~].

(B) Vehicle that exceeds 25 feet in length: $36.80 [~~$36.11~~].

(2) A daily storage fee may be charged for any part of the day, except that a daily storage fee may not be charged for more than one day if the vehicle remains at the VSF less than 12 hours. In this paragraph a day is considered to begin and end at midnight.

(3) A VSF that has accepted into storage a vehicle registered in this state shall not charge for more than five days of storage fees until a notice, as prescribed in §85.703 of these rules, is mailed or published.

(4) A VSF that has accepted into storage a vehicle not registered in Texas shall not charge for more than five days of storage before the date the request for owner information is sent to the appropriate governmental entity or to the private entity authorized by that governmental entity to obtain title, registration, and lienholder information using a single vehicle identification inquiry.

(5) A VSF shall charge a daily storage fee after notice, as prescribed in §85.703, is mailed or published for each day or portion of a day the vehicle is in storage until the vehicle is removed and all accrued charges are paid.

(e) Impoundment fee. A VSF may charge a vehicle owner or authorized representative an impoundment fee of $20, subject to a biennial adjustment as set forth in Texas Occupations Code §2303.1552(b)(1). Per the 2021 [~~2019~~] biennial adjustment, the maximum amount that a VSF may charge for an impoundment fee is $21.03 [~~$20.64~~]. If the VSF charges a fee for impoundment, the written bill for services must specify the exact services performed for that fee and the dates those services were performed.

(f) Governmental or law enforcement fees. A VSF may collect from a vehicle owner or authorized representative any fee that must be paid to a law enforcement agency, the agency's authorized agent, or a governmental entity.

(g) Additional fees. A VSF may not charge additional fees related to the storage of a vehicle other than fees authorized by these rules or a nonconsent-towing fee authorized by Texas Occupations Code, §2308.2065.

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 July 30, 2021.

TRD-202102980

Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 463-3671

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CHAPTER 86. VEHICLE TOWING AND BOOTING

16 TAC §86.455

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 86, §86.455, regarding the Vehicle Towing and Booting Program. The proposed changes are referred to as "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC Chapter 86 implement Texas Occupations Code, Chapter 2308, Vehicle Towing and Booting.

The proposed rule addresses the maximum amounts for private property tows and drop fees that may be charged by a towing company. Pursuant to Occupations Code §2308.0575, the Texas Commission of Licensing and Regulation (Commission) is required to biennially contract for a fee study which examines private property towing fees assessed by towing companies based on factors such as: (1) the costs of company towing services; (2) changes in the Consumer Price Index for All Urban Consumers (CPI-U); (3) the geographic area, in this instance, a specific focus on the urban consumers for the U.S. South Region; and (4) individual cost components, including the CPI-U for motor vehicle maintenance and repair and the CPI-U for motor vehicle insurance and state gasoline prices. The proposed rule is based upon findings from the 2020 fee study and is necessary to comply with the statutory requirements to implement the biennial adjustment of fees for 2021, in order to protect public health and safety of consumers.

The proposed rule was presented to and discussed by the Towing and Storage Advisory Board at its meeting on July 29, 2021. The Advisory Board did not make any changes to the proposed rule. The Advisory Board voted and recommended that the proposed rule be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rule amends §86.455(b), by reflecting the new maximum amounts for private property tows that may be charged by a towing company in connection with a private property tow, as determined by the 2020 fee study required by statute.

The proposed rule amends §86.455(c), by reflecting the new maximum amounts for motor vehicle drop charges that may be charged by a towing company in connection with a private property tow prior to its removal from the premises or parked location, as determined by the 2020 fee study required by statute.

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.

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.

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 rule allows towing companies to adjust their private property tow fees to keep pace with inflation and current tow company costs. The fee changes help tow companies to be more financially secure in their operations and the rule also puts the public on notice of the fees that could be incurred if a vehicle is subject to a private property tow.

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 will be additional costs to persons who are required to comply with the proposed rule. The statutorily required change in the amount of fees that may be charged for a private property tow could have an economic impact on some members of the general public who have a vehicle towed through a private property tow, or who request the release of a hooked-up vehicle prior to it being towed. However, having to pay an increased fee may be avoided by members of the public through compliance with all parking requirements at private parking facilities and therefore not being subject to a tow and its associated fees.

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

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

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 proposed rule is proposed under Texas Occupations Code, Chapters 51 and 2308, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the proposed rule.

§86.455. Private Property Tow Fees.

(a) For purposes of this section:

(1) light-duty means the tows of motor vehicles with a gross weight rating of 10,000 pounds or less;

(2) medium-duty means the tows of motor vehicles with a gross weight rating of more than 10,000 pounds, but less than 25,000 pounds; [~~and~~]

(3) heavy-duty means the tows of motor vehicles with a gross weight rating that exceeds 25,000 pounds; and

(4) drop charge means the maximum that may be charged for the release of the vehicle before its removal from the property or parked location.

(b) The maximum amount that may be charged for private property tows is as follows:

(1) light-duty [~~light duty~~] tows--$272 [~~$255~~];

(2) medium-duty [~~medium duty~~] tows--$380 [~~$357~~]; and

(3) heavy-duty [~~heavy duty~~] tows--$489 [~~$459~~] per unit or a maximum of $978 [~~$918~~].

(c) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle that is parked without the authorization of the property owner attempts to retrieve the motor vehicle before its removal from the property or parked location, the maximum amount that may be charged for a drop charge (if the motor vehicle is hooked up) is:

(1) light-duty [~~light duty~~] tows--$135 [~~$127~~];

(2) medium-duty [~~medium duty~~] tows--$190 [~~$178~~]; and

(3) heavy-duty [~~heavy duty~~] tows--$244 [~~$229~~].

(d) If an owner, authorized operator, or authorized agent of the owner of a motor vehicle is present before the removal from the property or parked location the towing operator shall advise the owner, authorized operator, or authorized agent of the owner of a motor vehicle that he or she may offer payment of the towing drop charge.

(e) For purposes of this section, a tow company must accept cash, credit cards and debit cards as payment for the drop charge.

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 July 30, 2021.

TRD-202102981
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 463-3671

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PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS
SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS
DIVISION 3. PROGRAMS FOR GREYHOUNDS

16 TAC §303.102

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §303.102, Greyhound Rules. The proposed amendments would allow for the Texas Greyhound Association (TGA), rather than the National Greyhound Association, to register greyhounds as Texas-bred. These amendments were requested by the TGA as a cost-saving measure for its members.

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 amend-

ments 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 reduced cost to persons wishing to register Texas-bred greyhounds. 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.

§303.102 Greyhound Rules

(a) Registration as a Texas-Bred Greyhound.

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

(3) Registration Procedure.

(A) - (C) (No change.)

(D) If the litter qualifies to be registered as Texas-bred greyhounds, the TGA will stamp the "Litter Registration Acknowledgement" and "Certificate of Registration" of each affected greyhound as "Texas Bred" and return them [~~it~~] to the sender. [~~The TGA will notify the NGA of all litters registered as "Texas Bred".~~]

[~~(E) On notice that a litter has been registered as "Texas Bred", the NGA will stamp the "Certificate of Registration" of each affected greyhound as "Texas Bred".~~]

(E) [~~(F)~~] A person who submits an application for registration knowing that the application contains false information is subject to discipline by the TGA Executive Committee, including suspension from the TGA.

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

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

Filed with the Office of the Secretary of State on July 28, 2021.

TRD-202102915
Chuck Trout
Executive Director
Texas Racing Commission
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 833-6699

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 174. TELEMEDICINE

SUBCHAPTER A. TELEMEDICINE

22 TAC §174.5

The Texas Medical Board (Board) proposes amendments to 22 TAC §174.5, relating to the Issuance of Prescriptions.

The amendments to §174.5(e) allow physicians to utilize telemedicine to continue issuing previous prescription(s) for scheduled medications to established chronic pain patients, if the physician has, within the past 90 days, seen a patient in-person or via a telemedicine visit using two-way audio and video communication. The amendments will consistently and conveniently provide patients access to schedule drugs needed to ensure on-going treatment of chronic pain and avoid potential adverse consequences associated with the abrupt cessation of pain medication.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments will be to allow physicians and other health care professionals to provide necessary medical services to related to issuance of prescriptions including controlled substances for patients. The amendments eliminate the required travel to the physician or healthcare provider for an in-person visit each time the patient needs a refill for pain medication and improves the overall continuity of care for these patients, while still meeting the standard of care and complying with state and federal law.

Mr. Freshour has also determined that for the first five-year period the amendments are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed amendments.

Mr. Freshour has also determined that for the first five-year period these amendments are in effect there will be no probable economic cost to individuals required to comply with these proposed amendments.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed amendments and determined that for each year of the first five years the amendments will be in effect, there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years the amendments are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the proposed amendments;

(2) there is no estimated reduction in costs to the state or to local governments as a result of enforcing or administering the proposed amendments;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed amendments; and

(4) there is no foreseeable implication relating to cost or revenues of the state or local governments with regard to enforcing or administering the proposed amendments.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the amendments will be in effect, there will be no effect on local economy and local employment.

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

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

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

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

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

(5) The proposed amendments do not create new regulations.

(6) The proposed amendments do not repeal existing regulations. The proposed amendments do not expand or limit an existing regulation.

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

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

Comments on the proposals may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The proposed amendments are proposed under the authority of Texas Occupations Code §§153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and to adopt rules necessary to regulate and license physicians.

Other statutes affected by this rule are Chapters 111 of the Texas Occupations Code.

§174.5. Issuance of Prescriptions.

(a) The validity of a prescription issued as a result of a telemedicine medical service is determined by the same standards that would apply to the issuance of the prescription in an in-person setting.

(b) This rule does not limit the professional judgment, discretion or decision-making authority of a licensed practitioner. A licensed practitioner is expected to meet the standard of care and demonstrate professional practice standards and judgment, consistent with all applicable statutes and rules when issuing, dispensing, delivering, or administering a prescription medication as a result of a telemedicine medical service.

(c) A valid prescription must be:

(1) issued for a legitimate medical purpose by a practitioner as part of patient-practitioner relationship as set out in §111.005, of Texas Occupations Code; and

(2) meet all other applicable laws before prescribing, dispensing, delivering or administering a dangerous drug or controlled substance.

(d) Any prescription drug orders issued as the result of a telemedicine medical service, are subject to all regulations, limitations, and prohibitions set out in the federal and Texas Controlled Substances Act, Texas Dangerous Drug Act and any other applicable federal and state law.

(e) Limitation on Treatment of Chronic Pain. Chronic pain is a legitimate medical condition that needs to be treated but must be balanced with concerns over patient safety and the public health crisis involving overdose deaths. The Legislature has already put into place laws regarding the treatment of pain and requirements for registration and inspection of pain management clinics. Therefore, the Board has determined clear legislative intent exists for the limitation of chronic pain treatment through a telemedicine medical service.

(1) Treatment for Chronic Pain. For purposes of this rule, chronic pain has the same definition as used in §170.2(4) of this title (relating to Definitions). Telemedicine medical services used for the treatment of chronic pain with scheduled drugs by any means other than via audio and video two-way communication is prohibited, unless a patient:

(A) is an established chronic pain patient of the provider issuing the prescription;

(B) is receiving a prescription that is identical to a prescription issued at the previous visit; and

(C) has been seen by the prescribing physician or health professional defined under Chap 111.001(1) of Texas Occupations Code, in the last 90 days either:

(i) in-person; or

(ii) via telemedicine using audio and video two-way communication.

(2) Treatment for Acute Pain. For purposes of this rule, acute pain has the same definition as used in §170.2(2) of this title. Telemedicine medical services may be used for the treatment of acute pain with scheduled drugs, unless otherwise prohibited under federal and state law.

~~[(A) Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless otherwise allowed under federal and state law.]~~

~~[(B) Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise prohibited under federal and state 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 August 2, 2021.

TRD-202102995
Scott Freshour
General Counsel
Texas Medical Board
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 305-7016

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.24

The Texas Board of Nursing (Board) proposes amendments to 22 TAC §217.24(e), relating to *Telemedicine Medical Service Prescriptions.* The amendments are being proposed under the authority of the Occupations Code §301.151.

Background.

On March 13, 2020, the Governor of the State of Texas certified COVID-19 as posing an imminent threat of disaster to the public health and safety and declared a state of disaster in all counties of Texas. This declaration has been renewed each month thereafter, the most recent renewal taking effect July 30, 2021. On March 23, 2020, the Office of the Governor granted a waiver of 22 Texas Administrative Code §217.24(e), which prohibits an advanced practice registered nurse (APRN) from treating chronic pain with scheduled drugs through the use of telemedicine medical services, unless otherwise permitted under federal and state law. The waiver, however, expired on June 6, 2020.

The Board held a public meeting on June 8, 2020, to consider the adoption of an emergency rule to permit APRNs to treat chronic pain with scheduled drugs through the use of telemedicine medical services under certain conditions during the COVID-19 pandemic. At the conclusion of the meeting, the Board voted to adopt emergency amendments to 22 Texas Administrative Code §217.24(e).

Subsequently, the Board found that the continued effects of the COVID-19 pandemic necessitated the continuation of emergency amendments to §217.24(e) and re-adopted emergency amendments to the section several times, the last adoption taking effect on August 1, 2021. During its most recent public meeting on July 30, 2021, the Board determined that permanent rule amendments to §217.24(e), consistent with those amendments adopted on an emergency basis during the pandemic, should also be considered due to the continuation of the pandemic and recent increases in the number of new COVID-19 cases throughout the state. Further, the Board determined it would routinely evaluate the continued need for the permanent rule as the pandemic progresses to ensure ongoing compliance with state and federal law and to determine when, and if, the necessity of the permanent rule ceases to exist.

Section by Section Overview.

The proposed amendments to §217.24(e) are necessary to allow APRNs to provide necessary treatment to established patients with chronic pain while mitigating the risk of exposure to COVID-19. Under the proposed amendments, the treatment of chronic pain with scheduled drugs through the use of telemedicine medical services by any means other than via audio and video two-way communication is prohibited, unless certain conditions are met. First, a patient must be an established chronic pain patient of the APRN. Second, the patient must be receiving a prescription that is identical to a prescription issued at the previous visit. Third, the patient must have been seen by the prescribing APRN or physician or health professional as defined in Tex. Occ. Code §111.001(1) in the last 90 days, either in-person or via telemedicine using audio and video two-way communication.

These requirements are consistent with the rules adopted by the Texas Medical Board at 22 Texas Administrative Code §174.5 (relating to Issuance of Prescriptions) on an emergency basis, effective July 31, 2021, and being proposed by the Texas Medical Board as a permanent rule, as well as the provisions of federal law that currently permit the use of telemedicine medical

services for the prescription of controlled substances during the COVID-19 pandemic.

Further, an APRN must exercise appropriate professional judgment in determining whether to utilize telemedicine medical services for the treatment of chronic pain with controlled substances. In order to ensure that telemedicine medical services are appropriate for the APRN to use, the adopted rule requires an APRN to give due consideration to factors that include, at a minimum, the date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID-19 risks. These are not the sole, exclusive, or exhaustive factors an APRN should consider under this rule. Further, the proposed amendments only apply to those APRNs whose delegating physicians permit them to issue re-fills for patients, and the refills are limited to controlled substances contained in Schedules III through V only. If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical services as permitted by this rule, the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit.

The remaining proposed changes make conforming changes to the definitions of the terms *acute pain* and *chronic pain,* consistent with the definition used by the Texas Medical Board, in 22 Texas Administrative Code §170.2(2) and (4) (relating to Definitions).

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of rules that eliminate the required travel for in-person visits each time a patient needs a refill of pain medications and ensures the continuity of care for the patient during the ongoing pandemic. It is anticipated that the proposed amendments will improve the overall continuity of care for these patients, while still meeting applicable standards of care and current provisions of state and federal law.

It is not anticipated that any new costs of compliance will result from enforcement of the proposal. The proposed amendments provide an additional method for providers to serve their patients, but it is not mandated that providers utilize these telemedicine capabilities. Providers and patients may still choose to engage in in-person visits. For those providers who choose to offer telemedicine medical services under the proposal, each provider is free to choose the most economical method to do so. Since the proposal only requires audio and video two-way communication, it is also anticipated that most providers will already have access to such technology without additional cost resulting from this proposal.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. There are no anticipated costs associated with the proposal of this rule.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Since there are no anticipated costs associated with the proposal, there will be no effect on small businesses, micro businesses, or rural communities.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the Board; (v) the proposal does not create a new regulation, although it does provide an additional option for individuals already subject to its provisions; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to its applicability; and (viii) the proposal will not affect the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on this proposal should be submitted to both Kristin Benton, Director of Nursing, and James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to Kristin.Benton@bon.texas.gov and Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.151.

§217.24. Telemedicine Medical Service Prescriptions.

(a) - (d) (No change.)

(e) Limitation on Treatment of Chronic Pain. Chronic pain is a legitimate medical condition that needs to be treated, but must be balanced with concerns over patient safety and the public health crisis involving overdose deaths. The Legislature has already put into place laws regarding the treatment of pain and requirements for registration and inspection of pain management clinics. Therefore, the Board has determined clear legislative intent exists for the limitation of chronic pain treatment through a telemedicine medical service.

(1) For purposes of this rule, chronic pain has the same definition as used in 22 Texas Administrative Code §170.2(4) (relating to Definitions). [~~Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless otherwise allowed under federal and state law. For purposes of this section, "chronic pain" means a state in which pain persists beyond the usual course of an acute disease or healing of an injury. Chronic pain may be associated with a chronic pathological process that causes continuous or intermittent pain over months or years.~~]

(A) Telemedicine medical services used for the treatment of chronic pain with scheduled drugs by any means other than via audio and video two-way communication is prohibited, unless a patient:

(i) is an established chronic pain patient of the APRN;

(ii) is receiving a prescription that is identical to a prescription issued at the previous visit; and

(iii) has been seen by the prescribing APRN or physician or health professional as defined in Tex. Occ. Code §111.001(1) in the last 90 days, either:

(I) in-person; or

(II) via telemedicine using audio and video two-way communication.

(B) An APRN, when determining whether to utilize telemedicine medical services for the treatment of chronic pain with controlled substances as permitted by paragraph (1)(A) of this subsection, shall give due consideration to factors that include, at a minimum, the date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID risks. These are not the sole, exclusive, or exhaustive factors an APRN should consider under this rule.

(C) If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical services as permitted by paragraph (1)(A) of this subsection, the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit.

(2) For purposes of this rule, acute pain has the same definition as used in 22 Texas Administrative Code §170.2(2). Telemedicine medical services may be used for the treatment of acute pain with scheduled drugs, unless otherwise prohibited under federal and state law. [~~Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise prohibited under federal and state law. For purposes of this section, "acute pain" means the normal, predicted, physiological response to a stimulus, such as trauma, disease, and operative procedures. Acute pain is time limited.~~]

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 August 2, 2021.

TRD-202102998
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 228-1862

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PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 883. RENEWALS

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §883.1

The Texas Behavioral Health Executive Council proposes amendments to 22 TAC §883.1, relating to Renewal of a License.

Overview and Explanation of the Proposed Rule. The proposed amendment is intended to modify the assessment of late fees such that licensees need only pay a late renewal fee for late renewals, rather than a late fee in addition to the standard renewal fee.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs of state or local government. Conversely, Mr. Spinks has determined there will be a decrease or loss in revenues to state government as a result of this proposed amendment. Under the proposed amendment a licensee filing a late renewal would only have to pay the late renewal fee, as opposed to currently having to pay the renewal fee in addition to the late fee. If the same historical number of licensees that filed late renewals this past year continue to do so, then the amount of fees collected by this agency will be reduced by approximately $241,769.00 on an annual basis.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees because the proposed rule will provide greater equity in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the

Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase in fees paid to the agency but it is estimated to result in a decrease in fees paid to this agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via email to rules@bhec.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council proposes this amended rule pursuant to the authority found in §507.154 of the Tex. Occ. Code which authorizes the Executive Council to set fees necessary to cover the costs of administering Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code; as well as §507.255 of the Tex. Occ. Code which requires the Executive Council to charge late renewal fees.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§883.1. Renewal of a License.

(a) All licenses subject to the jurisdiction of the Council are renewable on a biennial basis and must be renewed online.

(b) Renewals are due on the last day of the license holder's birth month, but may be completed up to 60 days in advance.

(c) Renewal Conditions:

(1) Licensees must pay all applicable renewal and late fees, indicate compliance with any continuing education requirements, and comply with any other requests for information or requirements contained within the online renewal system as a prerequisite for renewal of a license. This paragraph is effective for licenses with expiration dates prior to November 30, 2021.

(2) Licensees must pay all applicable renewal or late renewal fees, indicate compliance with any continuing education requirements, and comply with any other requests for information or requirements contained within the online renewal systems as a prerequisite for renewal of a license. This paragraph is effective for licenses with expiration dates on or after November 30, 2021.

~~[(c) Licensees must pay all applicable renewal and late fees, indicate compliance with any continuing education requirements, and comply with any other requests for information or requirements contained within the online renewal system as a prerequisite for renewal of a license.]~~

(d) In addition to the requirements of subsection (c) of this section, licensees must also show compliance with each of the following as a condition of renewal:

(1) provide or update the standardized set of information about their training and practices required by §105.003 of the Health and Safety Code; and

(2) affirm or demonstrate successful completion of a training course on human trafficking prevention described by §116.002 of the Occupations Code.

(e) Licensed psychologists must update their online profile information when renewing their license.

(f) A license may not be renewed until a licensee has complied with the requirements of this rule.

(g) A licensee who falsely reports compliance with continuing education requirements on his or her renewal form or who practices with a license renewed under false pretenses will be subject to disciplinary action.

(h) Licensees will be sent notification of their approaching renewal date at least 30 days before their renewal date. This notification will be sent to the licensee's main address via first class mail. Responsibility for renewing a license rests exclusively with the licensee, and the failure of the licensee to receive the reminder notification from the Council shall not operate to excuse a licensee's failure to timely renew a license or any unlawful practice with a subsequent delinquent license.

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

Filed with the Office of the Secretary of State on August 2, 2021.

TRD-202103000
Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 305-7706

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

The Teacher Retirement System of Texas (TRS) proposes to repeal §§31.1 - 31.3 under Subchapter A (relating to General Provisions) of Chapter 31 in Part 3 of Title 34 of the Texas Administrative Code; §§31.11 - 31.15 under Subchapter B (relating to Employment After Service Retirement) of Chapter 31; and §§31.31 - 31.37 and 31.41 of Subchapter C (relating to Employment After Disability Retirement) of Chapter 31. These repeals are proposed in conjunction with the proposed new rules under Chapter 31 published elsewhere in this issue of the *Texas Register.*

BACKGROUND AND PURPOSE

TRS proposes to repeal its existing sixteen rules under Chapter 31 as part of a complete restructuring and revision of that chapter in order to implement new legislation passed by the 87th Texas Legislature. For the same purpose, TRS is also proposing eighteen new rules under Chapter 31 elsewhere in this issue of the *Texas Register.* These proposed new rules effectively incorporate most of the substantive requirements of the proposed repealed rules but make formatting and stylistic changes to those provisions for readability purposes. In some cases, the proposed new rules also remove obsolete requirements or make other substantive changes for policy or legislative reasons. A complete description of these changes can be found in the preamble to the proposed new Chapter 31 rules.

TRS has determined that the proposed repealed rules, if adopted, shall become effective on the same date that the proposed new Chapter 31 rules become effective. TRS has proposed that the proposed new Chapter 31 rules, published elsewhere in this issue of the *Texas Register,* shall become effective on November 1, 2021 or on the earliest first day of a calendar month after twenty days after TRS submits the adopted new rules to the Secretary of State.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed repealed rules will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed repealed rules.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed repealed rules will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the proposed repealed rules will permit TRS to adopt its proposed new Chapter 31 rules in order to conform with recent statutory changes. In addition, Mr. Green has determined that the public will benefit from increased readability of the proposed new rules if adopted in place of the proposed repealed rules.

Mr. Green has also determined that the public will incur no new costs as a result of the proposed repealed rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed repealed rules. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed repealed rules. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed repealed rules are in effect, the proposed repealed rules will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand or limit an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

The proposed repealed rules will repeal sixteen existing rules for the reasons stated above in this preamble.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed repealed rules; therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed repealed rules because the proposed repealed rules do not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

34 TAC §§31.1 - 31.3

STATUTORY AUTHORITY

The proposed repealed rules are proposed under the authority of Government Code §824.604, which provides that the board of trustees may adopt rules to administer laws under Subchapter G of Chapter 824 of the Government Code; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The proposed repealed rules affect the following statutes: Government Code §824.601, which relates to loss of monthly benefits; Government Code §824.602, which relates to exceptions; and Government Code §825.4092, relating to employer contributions for employed retirees.

§31.1. Definitions.
§31.2. Monthly Certified Statement.
§31.3. Exceptions Apply only to Effective Retirements.

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 July 30, 2021.

TRD-202102987
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 542-6560

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SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

34 TAC §§31.11 - 31.15

STATUTORY AUTHORITY

The proposed repealed rules are proposed under the authority of Government Code §824.604, which provides that the board of trustees may adopt rules to administer laws under Subchapter G of Chapter 824 of the Government Code; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The proposed repealed rules affect the following statutes: Government Code §824.601, which relates to loss of monthly benefits; and Government Code §824.602, which relates to exceptions.

§31.11. Employment Resulting in Forfeiture of Service Retirement Annuity.
§31.12. Exceptions to Forfeiture of Service Retirement Annuity.
§31.13. Substitute Service.
§31.14. One-half Time Employment.
§31.15. Full-time Employment after 12 Consecutive Month Break in Service.

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 July 30, 2021.

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Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 542-6560

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SUBCHAPTER C. EMPLOYMENT AFTER DISABILITY RETIREMENT

34 TAC §§31.31 - 31.37, 31.41

STATUTORY AUTHORITY

The proposed repealed rules are proposed under the authority of Government Code §824.604, which provides that the board of trustees may adopt rules to administer laws under Subchapter G of Chapter 824 of the Government Code; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The proposed repealed rules affect the following statutes: Government Code §824.310, relating to purpose of disability benefit; limit on supplemental income; Government Code §824.601, which relates to loss of monthly benefits; and Government Code §824.602, which relates to exceptions.

§31.31. Employment Resulting in Forfeiture of Disability Retirement Annuity.
§31.32. Half-time Employment Up to 90 Days.
§31.33. Substitute Service Up to 90 Days.
§31.34 Employment Up to Three Months on a One-Time Only Trial Basis.
§31.35. Disability Retiree Report of Excess Compensation.
§31.36. Forfeiture of Disability Retirement Annuity Payments Due to Excess Compensation.
§31.37. Applicability of Excess Compensation Provisions to Employment in Texas Public Educational Institutions.
§31.41. Return to Work Employer Pension Surcharge.

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 July 30, 2021.

TRD-202102989
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 542-6560

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CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

The Teacher Retirement System of Texas (TRS) proposes new §§31.1 - 31.6 under new Subchapter A (relating to General Provisions and Procedures) of Chapter 31 in Part 3 of Title 34 of the Texas Administrative Code; new §§31.11 - 31.19 under new Subchapter B (relating to Employment After Retirement Exceptions)

of Chapter 31 in Part 3 of Title 34 of the Texas Administrative Code; and new §§31.31 - 31.33 of new Subchapter C (relating to Disability Retiree Compensation Limits) of Chapter 31 in Part 3 of Title 34 of the Texas Administrative Code. These new rules are proposed in conjunction with the proposed amendments to §41.4 (relating to Employer Health Benefit Surcharge) and the proposed repeals of all current rules under Chapter 31 (relating to Employment After Retirement) in Part 3 of Title 34 of the Texas Administrative Code as published elsewhere in this issue of the *Texas Register.*

BACKGROUND AND PURPOSE

TRS proposes eighteen new rules relating to employment after retirement (EAR) for TRS retirees in order to implement new legislation passed by the 87th Texas Legislature. Specifically, these proposed new rules are necessary to implement House Bill 1585 (HB 1585), Senate Bill 202 (SB 202), Senate Bill 288 (SB 288), and Senate Bill 1356 (SB 1356). Each of these bills made substantial changes to EAR for TRS retirees.

HB 1585 amended, most relevantly, Government Code §824.601 to make two key changes to TRS's EAR requirements. First, HB 1585 amended Government Code §824.601(b-1) to change the current "safe harbor" retirement date for service retirees who are exempt from EAR restrictions from January 1, 2011, to January 1, 2021. Second, HB 1585 amended Government Code §824.601 by creating a "three strikes" process under new subsection (b-3) that must be completed before a service retiree forfeits the retiree's full annuity for a month based on that retiree's employment with TRS-covered employers during that month. The "three strikes" consist of a series of warnings and an alternate "dollar-for-dollar" payment option that TRS must provide a service retiree before the retiree may be subject to total forfeiture of the retiree's annuity.

SB 202 amended Government Code §825.4092 and prohibits employers from directly or indirectly passing on the cost of either the pension or health benefit surcharge to retirees through payroll deductions, fees, or any other means designed to recover the cost.

SB 288 created new Government Code §824.6021 and amended Government Code §825.4092. These changes created a new EAR and surcharge exception for certain service retirees who are employed in positions dedicated to mitigating learning loss caused by the COVID-19 pandemic. The positions must be in addition to normal staffing levels, funded by specific federal relief funds, and end no later than December 31, 2024. This exception does not apply to disability retirees or retirees employed with institution of higher education.

Lastly, SB 1356 amended, most relevantly, Government Code §824.602 to create a new exception to TRS's EAR requirements. Specifically, under new Education Code §33.913, SB 1356 established a new method for nonprofit organizations to establish tutoring programs in cooperation with public schools. The amendment to Government Code §824.602 provides that TRS retirees may be employed in these programs up to full-time during a month without forfeiting their annuity for that month. These retirees remain subject to employer surcharges.

In addition to implementing legislation, the proposed new rules also make two key substantive changes to TRS's EAR requirements outside of the changes required by new legislation.

First, the proposed new rules change TRS's existing standard for one-half time employment from the current variable monthly limit equal to four clock hours per workday in a given calendar month to a uniform monthly limit of 92 hours per month regardless of the number of workdays in that month or 11 days if the retiree combines one-half time and substitute employment in that month. This new uniform limit will simplify EAR requirements for retirees and reporting employers, and the change is retiree-friendly because in no case would it reduce the hours or days available for a retiree to work on a one-half time or less basis during a month. If ultimately adopted, the new limit would not only apply for purposes of EAR, but it would also apply to employer surcharges. This application does mean that, in certain instances, TRS could possibly not receive surcharges that it currently does based on a retiree's employment during a month, but TRS's actuary of record, Gabriel, Roeder, Smith & Company (GRS), determined the change would not have a material negative impact on the pension fund.

Second, the proposed new rules expressly expand the definition of "substitute" for the purposes of EAR to include an employee who, on a temporary basis, monitors an in-person class while the classroom teacher temporarily instructs the class virtually. This is a novel employment arrangement that TRS has encountered during the COVID-19 public health emergency, and, based on an interpretation of its current rule, TRS has permitted this arrangement to qualify as substitute employment for the purposes of EAR. This change to the rule codifies TRS's current interpretation of its substitute rule and places clear parameters upon when it may be used by school districts and retirees.

The proposed new rules also make several additional minor changes necessary to ensure that the EAR rules conform with current TRS practice and nomenclature, and the proposed new rule incorporate many existing provisions from the proposed repealed EAR rules. TRS has included a detailed, rule-by-rule summary of changes below in its "Section-by-Section Summary."

Lastly, TRS has determined that the proposed new rules, if adopted, shall become effective on November 1, 2021, or on the earliest first day of a calendar month after twenty days after TRS submits the adopted new rules to the Secretary of State.

SECTION-BY-SECTION SUMMARY

Proposed New §31.1 (relating to Definitions) defines several terms for use throughout Chapter 31. The proposed new rule incorporates existing definitions from current §31.1 and also adds several new definitions, such as for the terms "disability retiree," "service retiree," and "employment," to simplify and clarify rule language throughout the chapter.

Proposed New §31.2 (relating to Monthly Certified Statement) largely incorporates the existing provisions of current §31.2 with some nonsubstantive changes for style and clarity purposes. Proposed New §31.2 also adds provisions relating to how employers can report retirees working under EAR exceptions and makes other minor changes to conform the rule's requirements with how employer reporting works under TRS's current reporting system.

Proposed New §31.3 (relating to Return-to-Work Employer Pension Surcharge) largely incorporates the existing provisions of current §31.41 with some nonsubstantive changes for style and clarity purposes. In addition, Proposed New §31.3 adds provisions relating to the surcharge pass-through prohibition created by SB 202 and the new surcharge exception for certain federally-funded COVID-19 positions created by SB 288. Lastly, Proposed New §31.3 provides that a 92-hour uniform standard

for one-half time employment (or the combination standards for one-half time employment under Proposed New §31.19) shall be used to determine when employer surcharges are due.

Proposed New §31.4 (relating to Employment Resulting in Forfeiture of Retirement Annuity) incorporates provisions from current §31.11 and §31.31. Proposed New §31.4 also adds provisions to clarify the consequences for exceeding the limits on EAR for service retirees with an effective date of retirement on or before January 1, 2021; service retirees with an effective date of retirement after January 1, 2021; and disability retirees regardless of effective of retirement.

Proposed New §31.5 (relating to Notice and Forfeiture Requirements for Certain Service Retirees) implements the "three strikes" process from HB 1585. Proposed New §31.5 describes how TRS shall implement the three strikes process; how late adjustments to EAR reporting and retiree appeals will be incorporated into the process; and how TRS shall determine the date of issuance for a warning under the three strikes process.

Proposed New §31.6 (relating to Second EAR Warning Payments) implements the "dollar-for-dollar" payment option from the new "three-strikes" process. Proposed New §31.6 describes what compensation shall be used to determine the amount of the payment due under this requirement and how employers may adjust that compensation amount when a correction is needed. Proposed new §31.6 also provides that, by default, TRS will assume that a retiree who is subject to a second EAR warning must repay to TRS the lesser of either the total monthly annuity payments that the retiree received for the relevant months or the total compensation earned for all employment with TRS-covered employers for that month. Proposed new §31.6 also provides that a retiree may elect to pay TRS the greater of these two amounts if the retiree wishes to do so.

Proposed New §31.11 (relating to Exceptions to Forfeiture of Retirement Annuity) primarily incorporates provisions from current §31.3 and §31.12 but clarifies that EAR exceptions only apply for service retirees with a retirement date after January 1, 2021.

Proposed New §31.12 (relating to Substitute Service) primarily incorporates provisions from current §§31.1, 31.13, and 31.32. Proposed New §31.12 also extends the definition of "substitute" to include an employee monitoring an in-person class on a temporary basis while the classroom teacher is temporarily instructing the class virtually. In addition, Proposed New §31.12 also clarifies how the 90-day limit for disability retirees who work as substitutes interacts with the new tutor exception provided by SB 1356.

Proposed New §31.13 (relating to One-half Time Employment) largely incorporates provisions from current §31.14 and §31.33. In addition, Proposed New §31.13 provides for the new 92-hour uniform standard for determining whether a retiree has worked one-half time or less during a month. Proposed New §31.13 also clarifies how the 90-day limit for disability retirees who work one-half time or less interacts with the new tutor exception provided by SB 1356.

Proposed New §31.14 (relating to Full-time Employment after 12 Consecutive Month Break in Service) largely incorporates provisions from current §31.15. In addition, Proposed New §31.15 clarifies that employment under either of the new EAR exceptions (the tutor exception or federally-funded COVID-19 position exception) counts as employment with a TRS-covered employer for the purposes of determining whether the retiree has had a 12 full, calendar month break in service after retirement.

Proposed New §31.15 (relating to Tutors under Education Code §33.913) implements the tutor exception to EAR created by SB 1356. In addition, Proposed New §31.15 clarifies that employment under the tutor exception count is subject to the general 90-day per school year limit for disability retirees who return to work for a TRS-covered employer.

Proposed New §31.16 (relating to Federally-Funded COVID-19 Personnel) implements the new federally-funded COVID-19 position exception provided by SB 288. Proposed New §31.16 also clarifies that, for the purposes of EAR, a position will be considered to end by December 31, 2024 if the position no longer exists after that date or if the position is no longer funded by federal funds after that date.

Proposed New §31.17 (relating to Employment Up to Three Months on a One-time Trial Basis) primarily reincorporates the provisions of current §31.34 with only minor conforming changes.

Proposed New §31.18 (relating to Combining EAR Exceptions) incorporates provisions from existing §§31.13, 31.14, 31.32, and 31.33 regarding how one-half time employment and substitute employment combine for the purposes of EAR. In addition, Proposed New §31.18 provides for how the new tutor exception and federally-funded COVID-19 position exception combine with the existing EAR exceptions. Specifically, the rule clarifies that the federally-funded COVID-19 position exception shall be accounted for separately from other EAR exceptions and shall not affect employment under other EAR exceptions. More than one-half time employment under the tutor exception, however, may not be combined with employment under any other exception during a month unless all of the retiree's employment during that month qualifies as substitute employment or the retiree qualifies for the twelve-month break-in-service exception. If a retiree works one-half time or less under the tutor exception during a month, however, the retiree may combine that employment during a month just as a retiree could combine any other one-half time employment during a month. Lastly, Proposed New §31.18 provides for how TRS shall consider employment in a single position that qualifies for more than one EAR exception, most notably providing that a position that qualifies for the federally-funded COVID-19 position exception shall only be subject to the requirements and limits of that exception.

Proposed New §31.19 (relating to Combining EAR Exceptions and Employer Surcharges) incorporates existing provisions from current §31.41. Proposed New §31.19 provides for how TRS shall consider a retiree's employment during a month if the retiree combines employment under more than one EAR exception. The combination requirements largely mirror the combination limits under Proposed New §31.18 for the purpose of determining whether a retiree is subject to EAR forfeiture requirements except that, for the purposes of employer surcharges, employment more than one-half time under the tutor exception or under the twelve-month break-in-service exception is subject to employer surcharges.

Proposed New §31.31 (relating to Disability Retiree Report of Excess Compensation) primarily reincorporates the provisions of current §31.35 with only minor conforming changes.

Proposed New §31.32 (relating to Forfeiture of Disability Retirement Annuity Payments Due to Excess Compensation) primarily reincorporates the provisions of current §31.36 with only minor conforming changes.

Proposed New §31.33 (relating to Applicability of Excess Compensation Provisions to Employment in Texas Public Educational Institutions) primarily reincorporates the provisions of current §31.37 with only minor conforming changes.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed new rules will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed new rules.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed new rules will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the proposed new rules will be for TRS's EAR rules to conform with recent statutory changes. In addition, Mr. Green has determined that the change to a uniform one-half time standard will simplify and improve administration of EAR requirements for retirees, employers, and TRS, and TRS's actuary of record, Gabriel, Roeder, Smith & Company, has stated that the change would not materially harm the fund. Lastly, Mr. Green has determined that the public will benefit from increased readability of the proposed new rules.

Mr. Green has also determined that the public will incur no new costs as a result of complying with the proposed new rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed new rules. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed new rules. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed new rules are in effect, the proposed new rules will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

The proposed new rules will create 18 new rules but almost all these provisions either substantively reincorporate and reorganize provisions from existing Chapter 31 rules that are proposed for repeal elsewhere in this issue of the *Texas Register* or include language necessary to implement legislation.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed new rules, therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed new rules because the proposed new rules do not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

34 TAC §§31.1 - 31.6

STATUTORY AUTHORITY

The proposed new rules are proposed under the authority of Government Code §824.604, which provides that board of trustees may adopt rules to administer laws under Subchapter G of Chapter 824 of the Government Code; Government Code §825.4092, which relates to employer contributions for employed retirees; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The proposed new rules affect the following statutes: Government Code §824.601, which relates to loss of monthly benefits; Government Code §824.602, which relates to exceptions; Government Code §824.6021, relating to temporary exception to mitigate learning loss attributable to COVID-19 pandemic, as enacted by SB 288 to be effective on September 1, 2021; and Government Code §825.4092, relating to employer contributions for employed retirees.

§31.1. Definitions.

In this chapter, the following words and terms shall have the following meanings:

(1) Disability retiree--A TRS retiree receiving a disability annuity payment under Subchapter D of Chapter 824, Government Code.

(2) EAR--Employment after retirement.

(3) Employer--Any employer required to report the employment of active members or TRS retirees to TRS in accordance with Subtitle C of Title 8 of the Government Code.

(4) Employer surcharge--The return-to-work employer pension surcharge described under Section §31.3 of this title (relating to Return-to-Work Employer Pension Surcharge) and Government Code §825.4092.

(5) Employment--Any work arrangement between a Texas public educational institution and a TRS retiree that qualifies as employment under Government Code §824.601, including any work by a TRS retiree who is:

(A) employed by a third-party entity unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution; or

(B) performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(i) waiving, deferring, or foregoing compensation for the services or duties;

(ii) performing the duties or providing the services as an independent contractor; or

(iii) serving as a volunteer without compensation and performing the same duties or providing the same services for the institution that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

(6) Report month--The calendar month to which a monthly certified statement under §31.2 of this title (relating to Monthly Certified Statement) applies, rather than the month in which it is submitted to TRS.

(7) Retiree--A service retiree or disability retiree.

(8) School year--For purposes of employment after retirement, a twelve-month period beginning on September 1 and ending on August 31 of the calendar year.

(9) Service retiree--A retiree receiving a service annuity payment under Subchapter C of Chapter 824, Government Code.

(10) Third-party entity--An entity retained by a Texas public educational institution to provide personnel to the institution who perform duties or provide services that employees of that institution would otherwise perform or provide.

(11) TRS--The Teacher Retirement System of Texas.

§31.2. Monthly Certified Statement.

(a) In accordance with the requirements of Government Code § 824.6022, an employer shall submit to TRS a monthly certified statement of employment for all retirees employed by the employer during each month of a school year.

(b) Employers must submit the monthly certified statement and all required employer surcharges under §31.3 of this title (relating to Return-to-Work Employer Pension Surcharges) for each report month from September through July before the eleventh day of the month following the applicable report month. For the monthly certified statement for the report month of August, the employer shall submit the monthly certified statement and all required employer surcharges before the seventh day of September.

(c) If the due date for submission of a monthly certified statement and required employer surcharges under subsection (b) of this section falls on a weekend or federal holiday, an employer shall submit the monthly certified statement and required employer surcharges on the last business day prior to the due date.

(d) An employer that fails to timely submit a monthly certified statement and all required employer surcharges must also pay all applicable interest and late fees provided in subsections (f) and (g) of this section.

(e) A monthly certified statement is not considered submitted to TRS until it is completed. To be complete, the monthly certified statement must include all the following information regarding a retiree employed by the employer during the report month:

(1) the number of hours and days worked by the retiree;

(2) whether the retiree's employment qualifies as one or more of the following types:

(A) substitute employment;

(B) one-half time or less employment;

(C) employment as a tutor under Section 33.913 of the Education Code;

(D) employment in a federally-funded COVID-19 personnel position that meets the requirements of Section 824.6021 of the Government Code and §31.16 of this title (relating to Federally-funded COVID-19 Personnel);

(E) full-time employment;

(F) trial employment of a disability retiree for up to three months; or

(G) any combination of these types.

(3) the amount of gross compensation paid to the retiree during the report month;

(4) the total amount due under §41.4 of this title (relating to Employer Health Benefit Surcharge); and

(5) any other information requested by TRS to administer this chapter.

(f) Employers that fail to timely submit a monthly certified statement, any required employer surcharges, or interest on unpaid amounts as required in this section shall pay to TRS the late fee established in this subsection for each business day that the monthly certified statement is past due. The late fees required to be paid are as follows:

(1) For employers with fewer than 100 employees, the late fee for the first business day the monthly certified statement is past due is $100. For each subsequent business day that the monthly certified statement is past due, the employer shall pay an additional $10.

(2) For employers with at least 100 employees but no more than 500 employees, the late fee for the first business day the monthly certified statement is past due is $250. For each subsequent business day that the monthly certified statement is past due, the employer shall pay an additional $25.

(3) For employers with more than 500 employees but no more than 1,000 employees, the late fee for the first business day the report or documentation is past due is $500. For each subsequent business day that the monthly certified statement is past due, the employer shall pay an additional $50.

(4) For employers with more than 1,000 employees, the late fee for the first business day the monthly certified statement is past due is $1,000. For each subsequent business day that the monthly certified statement is pat due, the employer shall pay an additional $100.

(g) In determining the number of employees for purposes of assessing the late fee in subsection (f) of this section, TRS shall base the fee on the number of employees reflected on the employer's monthly certified statement for May of the preceding school year. New employers will pay late fees for the first school year as provided in subsection (f)(1) of this section.

§31.3. Return-to-Work Employer Pension Surcharge.

(a) For each report month a retiree is employed by an employer for more than 92 hours in a calendar month and that retiree is not exempt from surcharge under subsection (b) of this section, the employer shall pay to TRS a surcharge based on the compensation paid to the retiree during that report month. The criteria used to determine if a retiree is working more than 92 hours in a calendar month are the same as the criteria for determining one-half time employment under §31.13 of this title (relating to One-half Time Employment) even if the retiree's employment also qualifies for an exception under §31.14 of this title (relating to Full-time Employment after 12 Consecutive Month Break

in Service), or §31.15 of this title (relating to Tutors under Education Code §33.913).

(b) Employers are not required to submit employer surcharges based on the employment of a retiree during a calendar month if:

(1) the retiree works 92 hours or less during the applicable report month;

(2) the retiree retired prior to September 1, 2005;

(3) the retiree is employed solely as a substitute and that employment meets all the requirements §31.12 of this title (relating to Substitute Service) even if the retiree's substitute employment also qualifies for another exception under Subchapter B of this chapter (relating to Employment After Retirement Exceptions);

(4) the retiree is employed in multiple positions during the calendar month and does not exceed the limits for such combined employment under §31.19 of this title (relating to Combining EAR Exceptions and Employer Surcharges); or

(5) the retiree's employment is in a position that qualifies as a federally-funded COVID-19 position under §31.16 of this title (relating to Federally-funded COVID-19 Personnel) and Government Code §824.6021.

(c) The amount of the employer surcharge that an employer must contribute to TRS for each retiree subject to surcharge under this section is equal to the sum of the compensation paid to the retiree during the report month multiplied by the member contribution rate in effect for the report month plus the compensation paid to the retiree during the report month multiplied by the state contribution rate in effect for that report month.

(d) If a retiree is employed concurrently in more than one position, the employer surcharge is owed if the combined employment exceeds the monthly limits described by §31.19 of this title. If the employment is with more than one employer, the employer surcharge is owed by each employer.

(e) Employers shall not directly or indirectly pass the cost of the employer surcharge under this section on to the retiree through payroll deduction, by imposition of a fee, or by any other means designed to recover the cost.

§31.4. Employment Resulting in Forfeiture of Retirement Annuity.

(a) A service retiree with an effective date of retirement prior to January 1, 2021, may be employed in any capacity in Texas public education without forfeiture of benefits for the months of employment.

(b) A service retiree with an effective date of retirement after January 1, 2021, is subject to the forfeiture requirements of §31.5 of this title (relating to Notice and Forfeiture Requirements for Certain Service Retirees) for any month in which the retiree is employed by a Texas public educational institution unless the employment qualifies for an exception under Subchapter B of this chapter (relating to Employment After Retirement Exceptions).

(c) Disability retirees, regardless of their effective date of retirement, are not entitled to an annuity payment for any month in which the retiree is employed by a Texas public educational institution unless the employment qualifies for an exception under Subchapter B of this chapter.

(d) A retiree may be employed in private schools, public schools in other states, in private business, or in other entities that are not TRS-covered employers without forfeiting their annuities unless any of these entities also qualify as a third-party entities for the purposes of this chapter.

(e) This chapter applies only to persons retired under TRS. It does not apply to persons retired under other retirement or pension systems.

§31.5. Notice and Forfeiture Requirements for Certain Service Retirees.

(a) A service retiree with an effective date of retirement after January 1, 2021, shall only forfeit the service retiree's monthly annuity payment based on the service retiree's employment by a Texas public educational institution during a calendar month if the retiree has previously received the warnings required by subsections (b) and (c) of this section.

(b) If TRS determines that a service retiree's employment by a Texas public educational institution does not qualify for an exception under Subchapter B of this chapter (relating to Employment after Retirement Exceptions), TRS shall issue a written EAR warning to the service retiree notifying the retiree of this fact. The EAR warning under this subsection may address multiple months of the service retiree's employment.

(c) If TRS determines that a service retiree's employment by a Texas public educational institution does not qualify for an exception under Subchapter B of this chapter and that employment occurs in a month after the month TRS issued to the service retiree the warning under subsection (b) of this section, then TRS shall issue a second EAR warning to the service retiree that:

(1) notifies the service retiree of this fact; and

(2) requires the service retiree to pay TRS an amount equal to the lesser of the total amount of either:

(A) the service retiree's gross monthly annuity payments for the months addressed by this warning; or

(B) the total gross amount of compensation earned by the service retiree during the months addressed by this warning as described by §31.6 of this title (relating to Second EAR Warning Payments).

(d) The EAR warning under subsection (c) of this section may address multiple months of the service retiree's employment.

(e) If TRS determines that a service retiree's employment by a Texas public educational institution does not qualify for an exception under Subchapter B of this chapter and that employment occurs in a month after the month TRS issued to the retiree the second EAR warning under subsection (c) of this section, the service retiree is not entitled to receive a monthly annuity payment for any such month and TRS shall collect any annuity payments the service retiree received to which the service retiree was not entitled.

(f) If TRS determines after issuing an EAR warning under subsections (b) or (c) of this section that the service retiree's employment by a Texas public educational institution did not qualify for an exception under Subchapter B of this chapter and that employment occurred in a month prior to or during the month TRS issued such a warning but was not included in the warning, then TRS shall:

(1) issue an EAR warning in accordance with subsection (b) of this section if the excluded month was the month TRS issued the EAR warning under that subsection or an earlier month; or

(2) issue an EAR warning and request for payment under subsection (c) of this section if the excluded month was the month TRS issued the EAR warning under that subsection or in an earlier month that was also after the month TRS issued the EAR warning under subsection (b) of this section.

(g) If a service retiree appeals a TRS determination regarding the service retiree's employment with a Texas public educational institution during a month or months that TRS included in an EAR warning under subsection (b) or (c) of this section, the EAR warning shall still be considered to have been issued by TRS unless the service retiree's appeal contests every month addressed by the applicable warning. If the service retiree contests the TRS determination for every month included in an EAR warning, that EAR warning shall not be considered to have been issued during the pendency of the service retiree's appeal.

(h) If a service retiree prevails on an appeal of every month included in an EAR warning under subsection (b) or (c) of this section, then TRS shall rescind the EAR warning. If the service retiree's appeal does not prevail on any month included in an EAR warning under subsection (b) or (c) of this section, then the EAR warning shall be reinstated and TRS shall adjust the amounts owed by the service retiree to TRS, if any, for months after the issuance of the reinstated EAR warning in which TRS determined the service retiree's employment by a Texas public educational institution did not qualify for an exception to the limits on EAR as provided by Subchapter B of this chapter.

(i) TRS shall consider an EAR warning under this section to have been issued on the date TRS sends the warning to the service retiree.

§31.6. Second EAR Warning Payments.

(a) A service retiree who receives a second EAR warning as provided in §31.5 of this title (relating to Notice and Repayment Requirements for Certain Service Retirees) shall pay to TRS an amount equal to the lesser of either:

(1) the service retiree's gross monthly annuity payments for the months addressed by this warning; or

(2) the total gross amount of compensation earned by the service retiree during the months addressed by this warning as described by this section.

(b) The amount in subsection (a)(2) of this section shall only include all compensation earned by the service retiree based on the service retiree's employment with a Texas public educational institution during a month subject to the second EAR warning regardless of when such an amount is paid to the service retiree. The amount shall not include:

(1) compensation paid to the service retiree during the applicable months unless the service retiree also earned the compensation based on the service retiree's employment with a Texas public educational institution during a month subject to the second warning;

(2) compensation earned by the service retiree in a position that qualifies for the exception under §31.16 of this title (relating to Federally-funded COVID-19 Personnel); and

(3) compensation paid to the service retiree that would not qualify as creditable compensation if paid to an active member by an employer for the same services.

(c) A service retiree may elect to pay the greater of the two amounts described by subsection (a) of this section. If a retiree elects to pay the greater amount, the retiree must notify TRS of this election in writing.

(d) If an employer adjusts the compensation earned by a service retiree in a month subject to a second EAR warning payment under this section but does not adjust the hours or days worked by the retiree relating to that compensation, the amount due shall be adjusted for that payment, and TRS shall request or return any amounts necessary to correct the payment so long as the adjustment is received no later than 12 months after the end of the school year in which the compensation was earned.

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 July 30, 2021.

TRD-202102983
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 542-6560

SUBCHAPTER B. EMPLOYMENT AFTER RETIREMENT EXCEPTIONS

34 TAC §§31.11 - 31.19

STATUTORY AUTHORITY

The proposed new rules are proposed under the authority of Government Code §824.604, which provides that board of trustees may adopt rules to administer laws under Subchapter G of Chapter 824 of the Government Code; Government Code §825.4092, which relates to employer contributions for employed retirees; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The proposed new rules affect the following statutes: Government Code §824.601, which relates to loss of monthly benefits; Government Code §824.602, which relates to exceptions; Government Code §824.6021, relating to temporary exception to mitigate learning loss attributable to COVID-19 pandemic, as enacted by SB 288 to be effective on September 1, 2021; and Government Code §825.4092, relating to employer contributions for employed retirees.

§31.11. Exceptions to Forfeiture of Retirement Annuity.

(a) Service retirees who retired after January 1, 2021, and all disability retirees are subject to the forfeiture requirements in §31.4 of this title (relating to Employment Resulting in Forfeiture of Retirement Annuity) for any month in which the retiree is employed by a public educational institution covered by TRS unless the employment qualifies for an exception under this subchapter.

(b) The exceptions to forfeiture of annuities provided in this chapter apply only to retirees who have effectively retired by ending all employment as described in Government Code §824.002 and §29.15 of this title (relating to Termination of Employment) and who do not revoke retirement by becoming employed in any position by Texas public educational institutions in the month immediately following the retiree's effective date of retirement (or in the two months immediately following the person's effective date of retirement if the effective date of retirement is May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

§31.12. Substitute Service.

(a) In this section, "substitute" means a retiree employed by a Texas public educational institution and paid no more than the daily rate of pay for substitutes as set by the employer to work:

(1) on a temporary basis in the place of a current employee(s);

(2) in a vacant position for no more than 20 days if the retiree was not the last person to hold the vacant position and the retiree has not previously been employed in that vacant position during the same school year; or

(3) on a temporary basis to monitor an in-person class while the classroom teacher temporarily instructs the class virtually.

(b) A retiree may be employed in a month solely as a substitute in a public educational institution without forfeiting the annuity payment for that month.

(c) A retiree who reports for duty as a daily substitute during any day and works any portion of that day shall be considered to have worked one day.

(d) A disability retiree may not be employed as a substitute under this section for more than 90 days in a school year. A disability retiree who works more than 90 days in a substitute position shall forfeit the disability retiree's annuity for the month during which the disability retiree exceeded 90 days and in each subsequent month during the same school year that the disability retiree is employed by a Texas public educational institution.

§31.13. One-half Time Employment.

(a) A retiree may be employed by a Texas public educational institution in any position, other than as a substitute, on as much as a one-half time basis without forfeiting annuity payments for the applicable months of employment. In this section, one-half time basis means no more than 92 hours in a calendar month. The total number of hours allowed for that month may be worked in any arrangement or schedule.

(b) Paid time-off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is employment for purposes of this section and must be included in determining the total amount of time worked in a calendar month and reported to TRS as employment for the calendar month in which it is taken.

(c) For the purpose of this section, employment as an instructor for actual course or lab instruction with an institution of higher education (including community and junior colleges and online coursework) in classes taken by students for college credit or classes that are taken to prepare students for college level work shall be counted as a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab in order to reflect instructional time as well as preparation, grading, and other time typically associated with one hour of instruction. If the employer has established a greater amount of preparation time for each hour in the classroom or lab, the employer's established standard will be used to determine the number of courses or labs a retiree may teach under the exception to loss of annuity provided by this section. The equivalent clock hours computed under this subsection must be equal to or less than the number of work hours authorized in subsection (a) of this section for the retiree to be considered as working on a one-half time basis.

(d) Employment as an instructor of continuing education, adult education, or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which the students or participants do not receive college credit, must be counted based on the number of clock hours worked.

(e) A disability retiree may not be employed on as much as a one-half time basis under this section for more than 90 days in a school year. A disability retiree who works more than 90 days on as much as one-half time basis under this section shall forfeit the disability retiree's annuity for the month during which the disability retiree exceeded 90 days and in each subsequent month during the same school year that the disability retiree is employed by a Texas public educational.

(f) For the purposes of calculating the number of days worked by a disability retiree has worked during a school year under this section, working any part of a day counts as working the entire day.

§31.14. Full-time Employment after 12 Consecutive Month Break in Service.

(a) A service retiree may be employed in any capacity in Texas public education, including as much as full-time, if the service retiree has been separated from service with all Texas public educational institutions for at least 12 full, consecutive calendar months after the retiree's effective date of retirement. The 12-month separation period may be any 12 consecutive calendar months following the month of retirement.

(b) During the separation period described by subsection (a) of this section, the service retiree may not be employed in any position or capacity by a public educational institution covered by TRS, including in any position or capacity that would qualify for an exception provided for in this subchapter. Paid time off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is considered employment for purposes of this subsection.

(c) A service retiree who is employed more than one-half time for a Texas public educational institution will be subject to the forfeiture requirements of §31.4 of this title (relating to Employment Resulting in Forfeiture of Retirement Annuity) if the retiree does not meet the separation requirements of this section and the employment does not otherwise qualify for an exception under this subchapter that permits the retiree to work full-time.

(d) The exception under this section does not apply to disability retirees.

§31.15. Tutors under Education Code §33.913.

(a) Except as provided by §31.18 of this title (relating to Combining EAR Exceptions) and subsection (b) of this section, a retiree may be employed by a Texas public educational institution in a tutoring position that meets the requirements of Section 33.913 of the Education Code for any number of hours or days during a month without being subject to the forfeiture requirements of §31.4 of this title (relating to Employment Resulting in Forfeiture of Retirement Annuity).

(b) A disability retiree may not be employed on as a tutor under this section for more than 90 days in a school year. A disability retiree who works more than 90 days on as a tutor under this section shall forfeit the disability retiree's annuity for the month during which the disability retiree exceeded 90 days and in each subsequent month during the same school year that the disability retiree is employed by a Texas public educational.

(c) For the purposes of calculating the number of days worked by a disability retiree has worked during a school year under this section, working any part of a day counts as working the entire day.

§31.16. Federally-funded COVID-19 Personnel.

(a) A service retiree is not subject to the warning, payment, and forfeiture requirements of §31.4 of this title (relating to Employment Resulting in the Forfeiture of Retirement Annuity) if the service retiree is employed by a Texas public educational institution, other than an institution of higher education, in a position performing duties related to the mitigation of student learning loss attributable to the coronavirus disease (COVID-19) pandemic, if the position:

(1) is in addition to the normal staffing level at the Texas public educational institution;

(2) is funded wholly by federal funds provided under federal law enacted for the purpose of providing relief related to the coronavirus disease (COVID-19) pandemic, including the Coronavirus Aid, Relief, and Economic Security (CARES) Act (15 U.S.C. Section 9001 et seq.), Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (Div. M, Pub. L. No. 116-260), or American Rescue Plan Act of 2021 (Pub. L. No. 117-2); and

(3) ends on or before December 31, 2024.

(b) A position ends on or before December 31, 2024, if the position no longer exists after that date or if the position is no longer funded with the above-described federal funds after that date.

(c) This exception does not apply to disability retirees.

§31.17. Employment Up to Three Months on a One-time Trial Basis.

(a) A disability retiree may, without forfeiting payment of the retiree's monthly annuity, be employed on a one-time only trial basis on as much as full-time for a period of no more than three consecutive months if the work meets the requirements in subsection (b) of this section and the person complies with the requirements of subsection (c) of this section.

(b) The work must occur:

(1) in a period, designated by the employee, of no more than three consecutive months; and

(2) in a school year that begins after the retiree's effective date of retirement or no earlier than October 1 if the effective date of retirement is August 31.

(c) TRS must receive written notice of the retiree's election to take advantage of the exception described by this section. The notice must be made on a form prescribed by TRS and filed with TRS prior to the end of the three-month trial period.

(d) Working any portion of a month counts as working a full month for purposes of this section.

(e) The three-month exception permitted under this section is in addition to the 90 days of work allowed in §31.12 of this title (relating to Substitute Service) or §31.13 of this title (relating to One-half Time Employment) for a disability retiree.

(f) The trial work period may occur in one school year or may occur in more than one school year provided the total amount of time in the trial period does not exceed three months and the months are consecutive.

(g) A disability retiree may elect to work on a one-time only trial basis for as much as full time for a period of no more than three consecutive months for each period of disability retirement subject to the requirements of this section.

§31.18. Combining EAR Exceptions.

(a) If, during a calendar month, a retiree works in a position subject to more than one exception under this subchapter or in multiple positions subject to different exceptions under this subchapter and the retiree does not qualify for the twelve-month separation exception under §31.14 of this title (relating to Full-time Employment after 12 Consecutive Month Break in Service), TRS shall use the following standards to determine whether the retiree's employment still meets the requirements of each applicable exception or if the retiree is subject to §31.4 of this title (Employment Resulting in Forfeiture of Retirement Annuity) based on that employment.

(b) If a retiree combines substitute service under §31.12 of this title (relating to Substitute Service) with one-half time employment under §31.13 of this title (relating to One-half Time Employment) in a calendar month and the retiree's employment in either position does not qualify for any other exceptions under this subchapter, then the retiree may not work more than 11 days combined during that month in the two or more positions.

(c) If, during a calendar month, a retiree works in more than one position and each qualifies as one-half time employment under §31.13 of this title and the retiree's employment in either position does not qualify for any other exceptions under this subchapter, then the retiree may not work more than 92 total hours in the combined positions.

(d) If a disability retiree combines substitute service under §31.12 of this title, one-half time employment under §31.13 of this title, or employment as a tutor under §31.15 of this title (relating to Tutors under Education Code §33.913) in a school year, each day worked under any of those three exceptions counts toward the maximum of 90 days that a disability retiree may work under any of the exceptions so that a disability retiree may never work more than a total of 90 days combined under the three exceptions.

(e) If, during a calendar month, a retiree works more than one-half time in a position that qualifies for the tutor exception under §31.15 of this title, then the retiree may not work in any other position for a Texas public educational institution without being subject to the forfeiture requirements of §31.4 of this title unless:

(1) the other position qualifies as substitute service and all the retiree's employment under the tutor exception under §31.15 of this title also qualifies as substitute service; or

(2) the other position qualifies for the tutor exception under §31.15 of this title or the COVID-19 position exception under §31.16 of this title (relating to Federally-funded COVID-19 Personnel).

(f) If, during a calendar month, a retiree works in a position that qualifies as substitute or as one-half time or less employment and that position also qualifies for the tutor exception under §31.15 of this title, then the retiree may combine work in that position with any other work that qualifies under the substitute exception under §31.12 of this title and one-half time employment under §31.13 of this title provided the retiree's combined work during the calendar month does not exceed the limits provided by subsection (b) and (c) of this section, as applicable.

(g) If, during a calendar month, a service retiree combines the federally-funded COVID-19 position exception under §31.16 of this title with employment under any other exception under this subchapter, then the service retiree's employment under the federally-funded COVID-19 position exception shall be accounted for separately from the service retiree's employment under any other exception under this subchapter. Hours or days worked under the federally-funded COVID-19 exception do not count toward or impact a retiree's employment under any other exception under this subchapter.

(h) A service retiree employed under the twelve-month separation exception under §31.14 of this title may be employed up to full-time by one or more Texas public educational institutions in one or more positions without limit under this section.

(i) If, during a calendar month, a retiree's position qualifies for more than one exception under this subchapter other than the federally-funded COVID-19 exception under §31.16 of this title, the retiree's position shall be subject to all monthly limits on that position under all applicable exceptions. If the limit under the applicable exceptions conflict or if one exception is more restrictive than the other, the least restrictive exception on a retiree's employment after retirement shall ap-

ply. If a service retiree's employment qualifies for the federally-funded COVID-19 exception under §31.16 of this title, it shall only be subject to the requirements of that section.

(j) For the purposes of this section, a retiree who works part of a day is considered to have worked the entire day.

§31.19. Combining EAR Exceptions and Employer Surcharges.

(a) If, during a calendar month, a retiree works in a position subject to more than one exception under this subchapter or in multiple positions subject to different exceptions under this subchapter, TRS shall use the following standards to determine whether the retiree's employment requires an employer to pay the return-to-work pension surcharge under §31.3 of this title (relating to Return-to-Work Employer Pension Surcharges).

(b) If a retiree combines substitute service under §31.12 of this title (relating to Substitute Service) with one-half time employment under §31.13 of this title (relating to One-half Time Employment) in a calendar month, then the employer employing the retiree must remit the employer surcharge to TRS if the retiree works more than 11 total days in both positions combined.

(c) If, during a calendar month, a retiree combines substitute service under §31.12 of this title with work that qualifies for the tutor exception under §31.15 of this title (relating to Tutors under Education Code §33.913), then the employer must remit the employer surcharge to TRS based on that combined employment unless:

(1) all of the retiree's employment under the tutor exception also qualifies as substitute service; or

(2) the retiree's non-substitute employment under the tutor exception does not exceed 92 hours in the calendar month when not combined with the retiree's substitute service and the retiree's total employment does not exceed 11 total days worked under both exceptions during the month.

(d) If, during a calendar month, a retiree combines one-half time employment under §31.13 of this title with non-substitute work under the tutor exception under §31.15 of this title, the employer must remit the employer surcharge to TRS if the retiree works more than 92 combined hours in all positions. If the retiree's employment under the tutor exception also qualifies as substitute service, then the employer must remit the employer surcharge if the retiree works more than 11 total days during the month in the combined tutor position and the non-tutor one-half time position.

(e) If, during a calendar month, a service retiree combines the federally-funded COVID-19 position exception under §31.16 of this title (relating to Federally-funded COVID-19 Personnel) solely with employment that qualifies as substitute service under §31.12 of this title, then an employer is not required to remit an employer surcharge to TRS for that retiree.

(f) If, during a calendar month, a service retiree combines the federally-funded COVID-19 position exception under §31.16 of this title with one-half time employment under §31.13 of this title, any hours worked by a retiree under the federally-funded COVID-19 exception will not count toward the 92 hours under the one-half time employment exception that a retiree may work before the employer must remit the employer surcharge.

(g) If, during a calendar month, a service retiree combines the federally-funded COVID-19 position exception under §31.16 of this title with work under the full-time employment after a twelve-month separation exception under §31.14 of this title (relating to Full-time Employment after 12 Consecutive Month Break in Service), any hours or days worked by a retiree under the federally-funded COVID-19 exception will not count toward the determination of whether the retiree worked more than 92 total hours during that month and the employer surcharge is due for that month.

(h) If, during a calendar month, a service retiree combines non-substitute work under either the tutor exception under §31.15 of this title with work under the federally-funded COVID-19 position exception under §31.16 of this title, any hours or days the retiree works under the federally-funded COVID-19 position exception shall not be counted in determining whether the retiree's worked more than 92 hours during the month and the employer surcharge is due for that month.

(i) If, during a calendar month, a retiree's employment in a position qualifies for the federally-funded COVID-19 position exception under §31.16 of this title and another exception under this subchapter that is subject to surcharge, work performed in that position is not subject to surcharge so long as the work continues to qualify for the federally-funded COVID-19 position exception.

(j) If, during a calendar month, a retiree's employment in a position that qualifies for as substitute service under §31.12 of this title and another exception under this subchapter that is subject to surcharge, work performed in that position is not subject to surcharge so long as the work continues to qualify as substitute service and is not combined with work in another position that is subject to surcharge during the same month.

(k) For the purposes of this section, a retiree who works part of a day is considered to have worked the entire day.

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 July 30, 2021.

TRD-202102984
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 542-6560

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SUBCHAPTER C. DISABILITY RETIREE COMPENSATION LIMITS

34 TAC §§31.31 - 31.33

STATUTORY AUTHORITY

The proposed new rules are proposed under the authority of Government Code §824.604, which provides that board of trustees may adopt rules to administer laws under Subchapter G of Chapter 824 of the Government Code; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The proposed new rules affect the following statutes: Government Code §824.310, relating to purpose of disability benefit; limit on supplemental income; Government Code §824.601, which relates to loss of monthly benefits; and Government Code §824.602, which relates to exceptions.

§31.31. Disability Retiree Report of Excess Compensation.

(a) A disability retiree who applies for disability retirement after August 31, 2007, and whose effective date of retirement is after

August 31, 2007, shall report to TRS compensation earned for work performed during disability retirement in accordance with this section.

(b) A disability retiree is not subject to the reporting requirement for compensation earned in a calendar year in which the disability retiree's annual gross disability retirement annuity payments from TRS total $2,000 or less.

(c) Unless excluded under subsection (a) or (b) of this section, a disability retiree is required to report to TRS compensation earned in a calendar year when the compensation exceeds the greater of the disability retiree's highest salary in any school year before disability retirement or $40,000.

(d) The reporting requirement applies to compensation earned in the first full calendar year that begins following the effective date of disability retirement and to compensation earned in each subsequent calendar year of disability retirement.

(e) Compensation that is required to be reported to TRS is payment, earnings, or net income for employment, work, labor, or services, whether performed for a Texas public education institution or another employer or entity. Compensation includes but is not limited to the following:

(1) "Wages" as defined under §3121 of the Internal Revenue Code of 1986 that are subject to Federal Insurance Contributions Act ("FICA") Social Security or Medicare employment taxes;

(2) Salary and wages, even if not subject to FICA taxes because of a technical exclusion of a type of employer or type of employment;

(3) Self-employment earnings, including net income from a trade or business;

(4) Compensation for work performed as an independent contractor;

(5) Net income earned as a sole proprietor or partner in a business; and

(6) Net income earned as an S corporation shareholder.

(f) A disability retiree shall submit a report required by this section to TRS after the end of the calendar year in which the compensation was earned but no later than May 1 of the calendar year following the year for which the report is due. A disability retiree shall submit all required information in the format designated by TRS.

(g) TRS may audit the compensation report of a disability retiree and require the disability retiree to provide supporting documentation, including copies of tax returns, W-2 forms, 1099 forms, and employment payroll records as necessary to verify the accuracy of a compensation report.

(h) TRS may obtain information from other sources with regard to the compensation earned by a disability retiree in order to administer applicable requirements.

(i) A report is due under this section for a calendar year in which one or more annuities have been forfeited pursuant to §31.32 of this title (relating to Forfeiture of Disability Retirement Annuity Payments Due to Excess Compensation).

§31.32. Forfeiture of Disability Retirement Annuity Payments Due to Excess Compensation.

(a) If a disability retiree earned compensation in excess of the applicable limit in §31.31(c) of this title (relating to Disability Retiree Report of Excess Compensation) in a calendar year for which a report is due, the disability retiree's annuities shall be forfeited in accordance with this section, beginning with the annuity payable for May of the calendar year following the year for which the report is due.

(b) A forfeiture of annuity payments under this section shall continue until the disability retiree submits a new report to TRS showing that the compensation has ceased or decreased sufficiently that it will no longer exceed the applicable limit. TRS will resume annuity payments following the receipt of the retiree's new report. Annuity payments shall be resumed no earlier than the payment for the calendar month following the month in which the compensation ceased or decreased. An annuity payment is not due for a month in which a disability retiree earns compensation that caused the annuity for the month to be forfeited prior to the retiree's new report, even if the total compensation for the calendar year is below the applicable limit in §31.31(c) of this title.

(c) A disability retiree who forfeits one or more annuities from TRS is also required to pay the total monthly cost of TRS-Care coverage as described in §41.5(f) of this title (relating to Payment of Contributions).

(d) Annuity payments are forfeited for a disability retiree who is required to file a report but fails to do so or for a disability retiree who fails to report all compensation required to be reported, beginning with annuity payments for the month following the month in which TRS discovers the failure.

(e) Nothing in this section shall be construed to prevent TRS from collecting the gross amount of ineligible annuity payments if TRS determines that a disability retiree knowingly failed to report compensation as required and the failure resulted in payment of annuities by TRS that the disability retiree was not eligible to receive.

(f) Forfeiture of annuity payments under this section shall not extend the guaranteed period of annuity payments, if the disability retiree elected a payment option described under Government Code §824.308(c)(3) or (4).

§31.33. Applicability of Excess Compensation Provisions to Employment in Texas Public Educational Institutions.

A disability retiree who earns compensation for employment by a public educational institution covered by TRS is subject to §31.31 of this title (relating to Disability Retiree Report of Excess Compensation), §31.32 of this title (relating to Forfeiture of Disability Retirement Annuity Payments Due to Excess Compensation), and §41.5 of this title (relating to Payment of Contributions), regardless of whether the employment results in the forfeiture of the annuity in the month in which the employment occurs, as provided for in §31.4 of this title (relating to Employer Resulting in the Forfeiture of Retirement Annuity).

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 July 30, 2021.

TRD-202102985
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 542-6560

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CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.4

The Teacher Retirement System of Texas (TRS) proposes to amend §41.4, relating to Employer Health Benefit Surcharge, under Subchapter A (relating to Retiree Health Care Benefits (TRS-CARE)) of Chapter 41 in Part 3 of Title 34 of the Texas Administrative Code. These amendments are proposed in conjunction with the proposed new rules and proposed repealed rules under Chapter 31 (relating to Employment After Retirement) in Part 3 of Title 34 of the Texas Administrative Code. These proposed new rules and proposed repeals are published elsewhere in this issue of the *Texas Register.*

BACKGROUND AND PURPOSE

TRS proposes to amend §41.4 (relating to Employer Health Benefit Surcharge) to implement new legislation passed by the 87th Texas Legislature. Specifically, the amendments to §41.4 are necessary to implement Senate Bill 202 (SB 202) and Senate Bill 288 (SB 288).

SB 202 amended Government Code §825.4092 and prohibits employers from directly or indirectly passing on the cost of either the pension or health benefit surcharge to retirees through payroll deductions, fees, or any other means designed to recover the cost.

SB 288 created new Government Code §824.6021 and amended Government Code §825.4092. These changes created a new employment after retirement and surcharge exception for certain service retirees who are employed in positions dedicated to mitigating learning loss caused by the COVID-19 pandemic. Importantly, SB 288 amended Section 825.4092 to not only exempt the employment of retirees from pension surcharge under Section 825.4092, but also the health benefit surcharge under that same section.

In addition, TRS proposes to amend §41.4 to conform with TRS's proposed new §31.3 and §31.19 (relating to Return-to-Work Employer Pension Surcharge and Combining EAR Exceptions and Employer Surcharges, respectively) that are published elsewhere in this edition of the *Texas Register.* In these proposed new rules, TRS established a new standard for determining whether a retiree is employed one-half time or less for the purposes of when the pension surcharge is due and also establishes what combinations of employment after retirement exceptions under Government Code §§824.601, 824.602, and 824.6021 can trigger the pension surcharge requirement for employers of TRS retirees. Because TRS has historically ensured that the employment standards applicable to the pension surcharge also applied to the health benefit surcharge, TRS proposes to amend §41.4 to ensure it remains consistent with the corresponding rules under Chapter 31.

Lastly, TRS has made minor or nonsubstantive changes to §41.4 in order for the language to comply with current TRS practices or nomenclature.

TRS has determined that proposed amended §41.4, if adopted, shall become effective on the same date that the proposed new and proposed repealed Chapter 31 rules become effective. TRS has proposed that the proposed new Chapter 31 rules, published elsewhere in this issue of the *Texas Register,* shall become effective on November 1, 2021, or on the earliest first day of a calendar month after twenty days after TRS submits the adopted new rules to the Secretary of State.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended §41.4 will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed repealed rules.

PUBLIC COST/BENEFIT

For each year of the first five years proposed amended §41.4 will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting proposed amended §41.4 will be that the rule will conform with recent statutory changes and TRS's proposed new rules under Chapter 31. In addition, Mr. Green has determined that the public will benefit from increased readability of proposed amended §41.4 if adopted.

Mr. Green has also determined that the public will incur no new costs as a result of proposed amended §41.4.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of proposed amended §41.4. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of proposed amended §41.4. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed repealed rules are in effect, proposed amended §41.4 will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand, repeal, or limit an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by proposed amended §41.4; therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to proposed amended §41.4 because it does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

STATUTORY AUTHORITY

Proposed amended §41.4 is proposed under the authority of Government Code §824.604, which provides that the board of trustees may adopt rules to administer laws under Subchapter G of Chapter 824 of the Government Code; Government Code §825.4092, which relates to employer contributions for employed retirees; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

Proposed amended §41.4 affects the following statutes: Government Code §824.6021, relating to temporary exception to mitigate learning loss attributable to COVID-19 pandemic, as enacted by SB 288 to be effective on September 1, 2021; and Government Code §825.4092, relating to employer contributions for employed retirees.

§41.4. Employer Health Benefit Surcharge.

(a) When used in this section, the term "employer" has the meaning given in §821.001(7), Government Code.

(b) For each report month a retiree is enrolled in TRS-Care and working for an employer for more than 92 hours [~~the equivalent of four clock hours for each work day~~] in that calendar month, the employer that reports the employment of the retiree on the Employment of Retired Members Report to TRS shall pay monthly to the Retired School Employees Group Insurance Fund (the Fund) a surcharge established by the Board of Trustees of TRS.

(c) The criteria used to determine if the retiree is working more than 92 hours [~~the equivalent of four clock hours for each work day~~] in that calendar month are the same as the criteria for determining one-half time employment under §31.13 [~~§31.14~~] of this title (relating to One-half Time Employment) even if the retiree's employment also qualifies for an exception under §31.14 of this title (relating to Full-time Employment after 12 Consecutive Month Break in Service) or §31.15 of this title (relating to Tutors under Education Code §33.913).

(d) The surcharge is also owed by the employer on any retiree who is enrolled in TRS-Care, is working for a third party entity but is working for more than 92 hours [~~the equivalent of four clock hours for each work day~~] in that calendar month and who is considered an employee of that employer under §824.601(d) of the Government Code.

(e) The surcharge under this section is not owed:

(1) by an employer for any retiree who retired from TRS before September 1, 2005; or

(2) by an employer for a retiree reported as working under the exception for substitute service [~~Substitute Service~~] as provided in §31.12 [~~§31.13~~] of this title (relating to Substitute Service) unless that retiree combines substitute service [~~Substitute Service~~] under §31.12 [~~§31.13~~] of this title with other non-substitute employment with the same or another employer or third party entity in the same calendar month;[~~. For each calendar month that the retiree combines substitute service and other employment as described so that the work exceeds one-half time as described in §31.14(e) of this title, the surcharge is owed by each employer as provided in this section~~]

(3) by an employer for any retiree that is employed in multiple positions during a calendar month and does not exceed the limits for such combined employment under §31.19 of this title (relating to Combining EAR Exceptions and Employer Surcharges); or

(4) by an employer for any service retiree that is employed in a position that qualifies as a federally-funded COVID-19 position under §31.16 of this title (relating to Federally-funded COVID-19 Personnel) and Government Code §824.6021.

[~~(f) A retiree who is enrolled in TRS-Care, is working for an employer or third party entity for more than the equivalent of four clock hours for each work day in that calendar month, and is reported on the Employment of Retired Members Report to TRS shall inform the employer of all employers of the retiree and all employers of any other retiree enrolled under the same account identification number. An employer who reports to TRS the employment of a retiree who is enrolled in TRS-Care and is working more than the equivalent of four clock hours for each work day in that calendar month shall inform TRS as soon as possible in writing of the name, address, and telephone number of any other employer that employs the retiree or any other retiree who is also enrolled under the same account identification number.~~]

(f) [~~(g)~~] If more than one employer reports the employment of a retiree who is enrolled in TRS-Care to TRS during any part of a month, the surcharge under this section required to be paid into the Fund by each reporting employer for that month is the total amount of the surcharge due that month divided by the number of reporting employers. The pro rata share owed by each employer is not based on the number of hours respectively worked by the retiree for each employer, nor is it based on the number of days respectively worked during the month by the retiree for each employer.

(g) [~~(h)~~] If a retiree who is enrolled in TRS-Care is employed concurrently by one or more employers in more than one position, the surcharge is owed if the combined employment exceeds the limits for such combined employment under §31.19 of this title [~~is for more than the equivalent of four clock hours for each work day in that calendar month. If the employment is with more than one employer, the surcharge will be paid according to subsection (g) of this section by each employer~~].

(h) [~~(i)~~] The employer shall maintain the confidentiality of any information provided to the employer under this section and shall use the information only as needed to carry out the purposes stated in this section and related applicable rules or statutes.

(i) Employers shall not directly or indirectly pass the cost of the surcharge under this section on to the retiree through payroll deduction, by imposition of a fee, or by any other means designed to recover the 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 July 30, 2021.

TRD-202102976
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 542-6560

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34 TAC §41.16

The Board of Trustees of the Teacher Retirement System of Texas (TRS) proposes new §41.16, concerning One-Time Reenrollment Opportunity.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 2022, 87th Legislature, Regular Session, 2021. H.B. 2022 amended Insurance Code, Chapter 1575 (TRS-Care) by amending Section 1575.161, concerning Enrollment Periods, to

add new Subsections (b) and (c). The new subsections mandate the Board of Trustees create rules to provide a one-time opportunity to reenroll in a health benefit plan offered under TRS-Care for an otherwise eligible retiree and provides that the new subsections expire September 1, 2024.

Proposed new §41.16, One-Time Reenrollment Opportunity, restates the eligibility requirements of new Section 1575.161(c); defines "eligible to enroll in Medicare"; addresses dependents; provides reenrollment will take effect on the first day of the month following the month in which TRS receives the written request; and provides that the new rule will expire September 1, 2024, unless extended by legislative action.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended rule will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed new rule.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed new rule will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the new rule will be to remedy the adverse effects changes to the plans during the period of January 1, 2017 and December 31, 2019, may have had on member choice to leave the plan during that timeframe by giving the members a one-time opportunity to reenroll in the plan. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed new rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed new rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed new rule is in effect, the proposed new rule will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed new rule; therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed new rule because it does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

STATUTORY AUTHORITY

The new rule is proposed under the authority of Chapter 1575, Insurance Code, which establishes the Texas Public School Employees Group Benefits Program (TRS-CARE), §1575.052, which allows the trustee to adopt rules, plans, procedures, and orders reasonably necessary to implement Chapter 1575; Chapter 825, Texas Government Code, which governs the administration of TRS, and §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The proposed new rule affects §1575.161, Insurance Code, concerning Enrollment Periods.

§41.16. One-Time Reenerollment Opportunity.

(a) A retiree who was enrolled in TRS-Care and voluntarily terminated the retiree's enrollment between January 1, 2017, and December 31, 2019, will have a one-time opportunity to reenroll in TRS-Care if the retiree is otherwise eligible and meets the following requirements:

(1) The retiree is eligible to enroll in Medicare at the time the retiree applies for reenrollment in TRS-Care; and

(2) The retiree applies for reenrollment into TRS-Care no later than December 31, 2023.

(b) A retiree will be considered eligible to enroll in Medicare for purposes of subsection (a)(1) of this section if at the time the retiree applies for reenrollment into TRS-Care, the retiree is eligible to enroll in the Medicare Advantage plan offered under TRS-Care, according to Section 1575.1582(b) of the Insurance Code.

(c) If the retiree's application to reenroll under this section is approved, the retiree will be able to enroll in TRS-Care any eligible dependents.

(d) If the retiree who was enrolled in TRS-Care and voluntarily terminated the retiree's enrollment between January 1, 2017 and December 31, 2019 has since passed away, the retiree's surviving spouse or the retiree's surviving dependent child will be eligible to enroll under this section, as long as:

(1) The surviving spouse or surviving dependent child qualifies as such under Section 1575.003 of the Insurance Code;

(2) The surviving spouse or surviving dependent child is eligible to enroll in Medicare at the time the person applies for enrollment, according to subsection (b) of this section; and

(3) The surviving spouse or surviving dependent child applies for enrollment into TRS-Care no later than December 31, 2023. If a surviving spouse's application for enrollment under this subsection is approved, the surviving spouse will be able to elect to enroll any eligible surviving dependent child as a dependent.

(e) The effective date of coverage in the TRS-Care plan under this section will be the first day of the month after TRS receives the written request from the eligible person to enroll.

(f) This section will expire on September 1, 2024, unless the one-time reenrollment opportunity is extended by legislative action, in which case this section will remain in place until such one-time reenrollment opportunity expires according to such legislative action.

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 July 30, 2021.

TRD-202102972
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 542-6292

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SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §§41.30, 41.34, 41.36, 41.37, 41.45

The Board of Trustees of the Teacher Retirement System of Texas (TRS) proposes amendments to §41.30, concerning Participation in the Health Benefit Program under the Texas School Employees Uniform Group Health Coverage Act by School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers; §41.34, concerning Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program; §41.36, concerning Enrollment Periods for TRS-ActiveCare; 34 TAC §41.37, concerning Effective Date of Coverage; and §41.45, concerning Required Information from School Districts with More than 1,000 Employees.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments is to implement Senate Bill (S.B.) 1444, 87th Legislature, Regular Session, 2021. S.B. 1444 amended Insurance Code, Chapter 1579 (TRS-ActiveCare) by adding §1579.1045 relating to alternative group health coverage prohibition and §1579.155 relating to program participation: election. New §1579.1045 of the Insurance Code clarifies that participating entities are prohibited from offering alternative group health coverage. New §1579.155 of the Insurance Code allows, effective on September 1, 2022, entities to elect to participate or discontinue participation in TRS-ActiveCare by providing written notice to TRS not later than December 31 of the year preceding the first day of the plan year in which the election will be effective; prohibits a participating entity that elects to discontinue participation in TRS-ActiveCare from electing to participate in the TRS-ActiveCare again until the fifth anniversary after the effective date of the entity's election to discontinue participation; and prohibits an entity that elects to participate in TRS-ActiveCare from discontinuing the entity's participation until the fifth anniversary of the effective date of the entity's election to participate.

Proposed amendments to §41.30 adds a subsection to address to whom the section is applicable; clarifies that an entity's mandatory notice of election to join TRS-ActiveCare will not be considered complete without the submission of the information required under §41.45; establishes the timing and process for joining and leaving TRS-ActiveCare; codifies the prohibition on offering alternative group health coverage; and identifies remedies for failure to comply with the statutes and rules.

Proposed amendments to §41.34 provide that individuals receiving COBRA continuation coverage under an alternative group health plan being offered concurrently with TRS-ActiveCare will not receive continuing COBRA coverage under TRS-ActiveCare if the participating entity terminates the alternative plan or is terminated from TRS-ActiveCare for violating Section 1579.1045 of the Insurance Code.

Proposed amendments to §41.36 modify the initial employee enrollment period for employees of a new participating entity in order to be consistent with the new language in §41.30.

Proposed amendments to §41.37 modify the effective date for employee coverage in order to be consistent with the new language in §41.30.

Proposed amendments to §41.45 make the submission of required information applicable to all entities, not just to School Districts with More than 1,000 Employees; clarify that this information is required to be provided at the same time as the notice of election and that failure to provide it will result in an incomplete election; adds additional information requirements.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended rule will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed amended rule.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amended rule will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of the adopting the amended rule will be to implement SB 1444 which gives entities the flexibility to join and leave TRS-ActiveCare and provides more stability for TRS-ActiveCare by clarifying that participating entities cannot offer alternative healthcare coverage plans. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed amended rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amended rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amended rule is in effect, the proposed amendments will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed amended rule, therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rule because it does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

STATUTORY AUTHORITY

The amendments are proposed under the authority of Insurance Code §1579.052, which allows the trustee to adopt rules relating to the program as considered necessary by the trustee and requires the trustee to take the actions it considers necessary to devise, implement, and administer the program; and Chapter 825, Texas Government Code, which governs the administration of TRS, §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The proposed amendments affect Chapter 1579, Insurance Code, which establishes the Texas School Employees Uniform Group Health Coverage (TRS-ActiveCare), §1579.1045 relating to alternative group health coverage prohibition; and §1579.155 relating to program participation: election.

§41.30. Participation in the Health Benefits Program under the Texas School Employees Uniform Group Health Coverage Act by School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers.

(a) Applicability. This section is applicable to the election to participate in TRS-ActiveCare by eligible entities such as school districts, other educational districts, charter schools, and regional education service centers, as these terms are defined in Chapter 1579, Insurance Code.

(b) [~~(a)~~] Manner, form and effect of election.

(1) Form of the notice of election. All elections to participate or discontinue participation in the health benefits program, referred to as "TRS-ActiveCare," under the Texas School Employees Uniform Group Health Coverage Act (the "Act"), Chapter 1579, Insurance Code, shall be in writing, in a form prescribed by the Teacher Retirement System of Texas (TRS), as trustee of TRS-ActiveCare.

(2) Incomplete notice of election. An incomplete or unsigned notice of election will not be deemed received by TRS for purposes of determining whether a valid election has been exercised. Written notice of election to participate in TRS-ActiveCare under this section submitted without the information required under §41.45 of this title (relating to Required Information from School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers Electing to Participate in TRS-ActiveCare) will be considered incomplete and will be denied by TRS. In order to reduce the possibility of submitting an incomplete form, entities should reach out to TRS before the election deadline referenced in this section to ask questions and address issues.

(3) [~~(2)~~] Timing of the receipt of the notice of election. A notice of election to participate or discontinue participation that is otherwise valid must be received by TRS no later than December 31 of the year preceding the first day of the plan year in which the election will be effective [~~on or prior to the tenth (10th) business day before the first day of the enrollment period established under §41.36 of this title for the entity seeking to join TRS-ActiveCare~~].

[~~(3) Time of the receipt of a notice of revocation. In order to revoke a valid election to participate in TRS-ActiveCare, a written notice of revocation, signed by the entity that filed the valid election, must be received by TRS no later than the tenth (10th) business day before the first day of the enrollment period established under §41.36 of this title for the entity. There is no particular form required for a written notice of revocation. However, an unsigned notice of revocation will not be deemed received by TRS for purposes of determining whether a valid revocation has been exercised.~~]

(4) Mandatory Participation and Exclusion Timeframes. Each time an entity submits a notice of election to participate in TRS-ActiveCare in accordance with subsection (b)(1) - (3) of this section, the entity is committing to participate for a minimum of five plan years, after which the entity may choose to submit a notice to discontinue participation. In the same manner, each time an entity submits a notice to discontinue participation in TRS-ActiveCare in accordance with subsection (b)(1) - (3) of this section, the entity is committing to leave the program for a minimum of five plan years, after which the entity may choose to submit a notice of election to participate. Mandatory participation and mandatory exclusion periods will be strictly enforced.[~~Discontinuance of participation. Entities that participate in TRS-ActiveCare may not discontinue participation unless authorized by Chapter 1579, Insurance Code, and by appropriate rule or resolution adopted by the TRS Board of Trustees.~~]

[~~(b) School districts with 500 or fewer employees. Pursuant to §1579.151(a), Insurance Code, school districts with 500 or fewer employees as of January 1, 2001 were required to participate effective September 1, 2002 in TRS-ActiveCare, except that certain of these school districts were authorized to delay or opt out of participation by specified election deadline dates. With regard to a school district that opted out of participation in TRS-ActiveCare pursuant to either §1579.151(b) or §1579.153(c), Insurance Code, as those provisions existed at the time the school district opted out, subsection (h) of this section provides the method for such a school district to change its election.~~]

[~~(c) School districts with 501 or more employees but not more than 1000 employees. School districts with 501 or more employees but not more than 1000 employees at any time during the 2001 school year, as reflected on any report received by TRS for a reporting period during that school year may elect to participate in TRS-ActiveCare in the manner prescribed in subsection (h) of this section.~~]

[~~(d) School districts with 1001 or more employees. A school district with 1001 or more employees at any time during the 2001 school year, as reflected on any report received by TRS for a reporting period during that school year, may elect to participate in TRS-Active-~~

Care by filing a notice of election in compliance with subsection (a) of this section, in which event the school district will become a participating entity on the later of the first day of the month following six (6) months from the date on which TRS receives the notice of election or a preferred date specified by the school district in its notice of election. Alternatively, the district will become a participating entity effective on the date approved by the executive director, if applicable, as described in subsection (i) of this section.]

[(e) Educational districts. Pursuant to §1579.151(c), Insurance Code, educational districts whose employees are members of TRS are required to participate effective September 1, 2002 in TRS-ActiveCare, except that educational districts with 500 or fewer employees on January 1, 2001 were allowed to opt out of participation. September 1, 2001 was the deadline for such an educational district to file its notice of election with TRS to opt out of participation in TRS-ActiveCare. Subsection (h) of this section provides the method for an educational district to change its election.]

(c) [(f)] Charter schools. [Pursuant to §1579.154, Insurance Code, an open-enrollment charter school established under Chapter 12, Subchapter D, Education Code, ("charter school") may elect to participate in TRS-ActiveCare by complying with both paragraphs (1) and (2) of this subsection. Only an eligible charter school under the Act may elect to participate.]

[(1)] Pursuant to §1579.154(a), Insurance Code, to be eligible, a charter school must agree to inspection of all records of the school relating to its participation in TRS-ActiveCare by TRS, by the administering firm as defined in §1579.002(1), Insurance Code, by the commissioner of education, or by a designee of any of those entities, and further must agree to have its accounts relating to participation in TRS-ActiveCare annually audited by a certified public accountant at the school's expense. The agreement of the charter school shall be evidenced in writing and shall constitute a part of a notice of election in a form prescribed by TRS pursuant to subsection (b) [(a)] of this section.

[(2) Eligible charter schools may elect to participate in TRS-ActiveCare by filing a notice of election in compliance with subsection (a) of this section, in which event:]

[(A) the charter school will become a participating entity on the later of the first day of the month following six (6) months from the date on which TRS receives the notice of election or a preferred date specified by the charter school in its notice of election; or]

[(B) alternatively, the eligible charter school will become a participating entity effective on the date approved by the executive director, if applicable, as described in subsection (i) of this section.]

[(g) Regional education service centers. Pursuant to §1579.151(a), Insurance Code, each regional education service center established under Chapter 8, Education Code, is required to participate effective September 1, 2002 in TRS-ActiveCare.]

[(h) School districts that opted out of participation in TRS-ActiveCare as described in subsection (b) or (c) of this section and educational districts that opted out of participation in TRS-ActiveCare as described in subsection (e) of this section may elect to participate in TRS-ActiveCare by filing a notice of election in compliance with subsection (a) of this section, in which event the school district will become a participating entity on the later of the first day of the month following six (6) months from the date on which TRS receives the notice of election or a preferred date specified by the school district in its notice of election. Alternatively, the district will become a participating entity effective on the date approved by the executive director, if applicable, as described in subsection (i) of this section.]

(d) [(i)] Effective Date of Participation or Discontinuation of Participation. An entity [that] will become a participating entity or discontinue to be a participating entity in TRS-ActiveCare on the first day of the plan year [month] following [six (6) months after] the December 31st date on which TRS receives the entity's notice of election [but desires] to become a participating entity or discontinue being a participating entity referenced in subsection (b) of this section.[on an earlier date may include in its notice of election a request that the executive director consider an exception to the notice requirement. The notice of election must include the earlier date on which the entity desires its coverage to begin. The executive director will grant the exception if, in his or her sole discretion, upon considering the following criteria, he or she finds that an exception is in the best interest of TRS-ActiveCare:]

[(1) the impact on the requesting entity's employees and dependents;]

[(2) the impact on the health plan administrator of TRS-ActiveCare;]

[(3) the impact on the provider network of TRS-ActiveCare;]

[(4) the number of potential enrollees that would be coming into TRS-ActiveCare for the first time on the same date; and]

[(5) the impact on TRS-ActiveCare as a whole, taking into account any recommendations and observations of TRS's health care consultant.]

(e) Alternative group health coverage prohibition. In accordance with Section 1579.1045, Insurance Code, a participating entity is prohibited from offering or making available group health coverage other than that provided under the TRS-ActiveCare program to the entity's employees or their employees' dependents.

(f) Remedies for failure to comply. If, contrary to subsection (e) of this section and Section 1579.1045 of the Insurance Code, a participating entity offers alternative group health coverage, TRS may pursue remedies for noncompliance, including but not limited to removal from or denial of entry into TRS-ActiveCare. TRS may impose or pursue one or more remedies. The pursuit of one remedy does not constitute a waiver of any other remedy that TRS may have at law or equity. If TRS discovers that a participating entity is in violation of subsection (e) after the beginning of a plan year, in addition to any other available remedy, TRS will remove the entity from the program effective at the end of the month in which TRS discovers the situation; and it will be the entity's liability to procure alternative coverage or provide other remedies for the employees and their dependents that lose coverage under these circumstances.

§41.34. Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program.

The following persons are eligible to be enrolled in TRS-ActiveCare under terms, conditions and limitations established by the trustees unless expelled from the program under provisions of Chapter 1579, Insurance Code:

(1) A full-time employee as defined in §41.33 of this title (relating to Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program).

(2) A part-time employee as defined in §41.33 of this title.

(3) Dependents, as defined in §41.33 of this title pursuant to §1579.004, Insurance Code. A child defined in §1579.004(3), Insurance Code, who is 26 years of age or older, is eligible for coverage only if, and only for so long as, such child's mental disability or physical incapacity is a medically determinable condition that prevents the child from engaging in self-sustaining employment as determined by TRS.

(4) Individuals employed or formerly employed by a participating entity, and their dependents, who are eligible for, or participating in, continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), through a group health benefit plan sponsored by the individual's employer on the first day that employer first becomes a participating entity if such individuals or their dependents would have met the requirements for eligibility in paragraphs [~~paragraph~~] (1), (2), or (3) of this section on the individual's last day of employment with the participating entity. Notwithstanding the foregoing, the individual is eligible to participate in TRS-ActiveCare only for the rest of the duration of the individual's eligibility for COBRA continuation coverage. This subsection will not apply to individuals that receive COBRA continuation coverage offered through an alternative group health plan coverage offered by a participating entity at the same time that the entity is offering coverage through TRS-ActiveCare, and the participating entity terminates the alternative group health plan coverage, or the participating entity is terminated from the program by TRS for violating Section 1579.1045, Insurance Code, and §41.30(e) of this title (relating to Participation in the Health Benefits Program under the Texas School Employees Uniform Group Health Coverage Act by School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers).

(5) An individual who qualifies for coverage pursuant to §41.38(b) of this title (relating to Termination Date of Coverage), and their dependents.

(6) Full-time or part-time employees as defined in §41.33 of this title and their eligible dependents may participate in an approved HMO if they reside, live, or work in the approved service area of the HMO and are otherwise eligible to participate in the HMO under the terms of the TRS contract with the HMO.

(7) Individuals who become eligible as determined by TRS for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272), through their participation in TRS-ActiveCare.

(8) Individuals who become eligible for coverage under the special enrollment provisions of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996)).

(9) Any other individuals who are required to be covered under applicable law.

§41.36. Enrollment Periods for TRS-ActiveCare.

(a) An individual who becomes an eligible full-time or eligible part-time employee has an initial enrollment period, for both himself or herself as well as for his or her eligible dependents, beginning on the first day that the individual becomes an eligible employee and ending at 11:59:59 p.m. Austin Time on the 31st day thereafter.

(b) If a current employee of a participating entity was an eligible part-time employee during an enrollment opportunity for the current plan year, and, later during the current plan year, this employee becomes an eligible full-time employee, then this employee has an enrollment period, for both himself or herself as well as for his or her eligible dependents, beginning on the first day that this individual becomes an eligible full-time employee and ending at 11:59:59 p.m. Austin Time on the 31st day thereafter. This enrollment opportunity exists even if this employee previously declined enrollment in TRS-ActiveCare during the current plan year.

(c) An eligible full-time or part-time employee whose employer becomes a participating entity has an initial enrollment period, for both himself or herself as well as for his or her eligible dependents, beginning at least [~~no later than~~] 31 days prior to the date that the annual enrollment period ends for the first plan year in [~~on~~] which the employer becomes a participating entity. [~~and ending on the last calendar day of the month immediately preceding the date on which the employer becomes a participating entity ("end date"). Notwithstanding the preceding sentence, a large school district, as defined hereafter, that becomes a participating entity after September 1, 2003, may recommend an initial enrollment period of not less than 31 days that closes before the end date. A recommended initial enrollment period that closes before the end date is subject to approval by TRS. As used in this section, a large school district shall mean a school district that had 1001 or more employees at any time during the 2001 school year, as reflected on any report received by TRS from that school district for a reporting period in that school year.~~]

(d) A full-time or part-time employee's eligible dependents, if covered, must be enrolled in the same coverage plan as the full-time or part-time employee under whom they qualify as a dependent. Except as otherwise provided under applicable state or federal law, an eligible full-time or part-time employee may not change coverage plans or add dependents during a plan year.

(e) The enrollment period for an individual who becomes eligible for coverage due to a special enrollment event, as described in §41.34(8) of this chapter (relating to Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program), shall be the 31 calendar days immediately after the date of the special enrollment event. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within this 31-day period.

(f) Eligible full-time and part-time employees and their eligible dependents who are enrolled in an HMO with a TRS contract that is not renewed for the next plan year may make one of the elections provided under this subsection. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare during the plan enrollment period. Coverage under the elected option becomes effective on September 1 of the next plan year. One of the following elections may be made under this subsection:

(1) change to another approved HMO for which the full-time or part-time employee is eligible; or

(2) enroll in the TRS-ActiveCare preferred provider organization coverage plan, without preexisting condition exclusions.

(g) Eligible full-time or part-time employees and their eligible dependents who are enrolled in an HMO with a TRS contract that is terminated during the plan year may make one of the elections provided under this subsection. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within 31 calendar days after notice of the contract termination is sent to the eligible full-time or part-time employee by TRS or its designee. Coverage under the elected option becomes effective on a date determined by TRS. One of the following elections may be made under this subsection:

(1) change to another approved HMO for which the full-time or part-time employees and their eligible dependents are eligible; or

(2) enroll in the TRS-ActiveCare preferred provider organization coverage plan, without preexisting condition exclusions.

(h) Eligible full-time or part-time employees and their eligible dependents enrolled in an approved HMO whose eligibility status changes because the eligible full-time or part-time employee no longer resides, lives, or works in the HMO service area may make one of the

elections provided under this subsection. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within 31 calendar days after the employee's change in eligibility status. Coverage under the elected option becomes effective on the first day of the month following the date the employee's eligibility status changed. One of the following elections may be made under this subsection:

(1) enroll in another approved HMO for which the full-time or part-time employee is eligible; or

(2) enroll in the TRS-ActiveCare preferred provider organization coverage plan, subject to applicable preexisting condition limitations.

(i) On behalf of the trustee, the executive director or a designee may prescribe open-enrollment periods and the conditions under which an eligible full-time or part-time employee and his eligible dependents may enroll during an open-enrollment period.

§41.37. Effective Date of Coverage.

(a) Except as otherwise provided by §41.39 of this title (relating to Coverage for Individuals Changing Employers) coverage shall become effective as described in this subsection for eligible full-time employees and eligible part-time employees whose employer first becomes a participating entity [~~after September 1, 2002,~~] and who enroll during the annual enrollment period. [~~no later than the last calendar day of the month~~] immediately preceding the date their employer first becomes a participating entity [~~or no later than the last day of an approved initial enrollment period for a large school district as provided by §41.36 of this title (relating to Enrollment Periods for TRS-ActiveCare)~~]. Coverage shall become effective for such individuals and their eligible dependents on the first day of the plan year [~~date~~] the employer first became a participating entity.

(b) Except as otherwise provided by §41.39 of this title (relating to Coverage for Individuals Changing Employers) coverage shall become effective as described in this subsection for eligible full-time employees and eligible part-time employees who begin working for a participating entity in an eligible capacity [~~after August 31, 2002,~~] and who enroll no later than the 31st day after the first date they become eligible to enroll, ("Individuals"). Coverage shall become effective for such Individuals and their eligible dependents on one of the following dates as specified by the Individual on the application for coverage:

(1) The first day the Individual is employed in an eligible capacity with the participating entity; or

(2) The first day of the calendar month following the month in which the Individual is employed in an eligible capacity with the participating entity.

(c) For eligible full-time employees, eligible part-time employees and their eligible dependents who enroll during an open-enrollment period as prescribed by the trustee, coverage shall become effective on the date specified by resolution of the trustee.

§41.45. Required Information from School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers Electing to Participate in TRS-ActiveCare [~~with More than 1,000 Employees~~].

(a) An eligible entity that submits a written election to participate in TRS-ActiveCare under §41.30 must include with the notice of election [~~No later than 30 calendar days after a large school district, as defined in subsection (b) of this section, submits its notice of election to become a participating entity in TRS-ActiveCare, the large school district must submit to TRS~~] the information listed below [~~in the following paragraphs~~] for each medical and prescription drug plan that the entity [~~large school district~~] offered to its employees during the designated time period. The entity [~~Large school districts~~] must include this information for the year to date for the plan year in which the entity [~~large school district~~] submits its notice of election (current year) and for the two complete plan years immediately preceding the current year. The required information is:

(1) Plan type (PPO, POS, HMO, etc.), including the effective date of each plan;

(2) Average number of employees participating in each plan;

(3) Average number of covered lives in each plan;

(4) Description of all medical and prescription drug benefits, including effective dates of any changes in each plan;

(5) Total premium rates by family tier for each insured plan, including effective dates of any changes;

(6) Total COBRA rates by family tier for each self-funded plan, including effective dates of any changes;

(7) Required employee contribution rates by family tier for each plan, including effective dates of any changes;

(8) Funding arrangement (fully insured, self-funded, etc.) for each plan;

(9) Total premiums paid by year for each plan, if insured; [~~and~~]

(10) Total claims paid by year for each plan;[~~.~~]

(11) Employee counts by age, gender, and participation status;

(12) A high cost claimant report; and

(13) Any other summary health information that TRS may require.

(b) Written notices of election to participate in TRS-ActiveCare under §41.30 without the information required under this section will be considered incomplete and will be denied by TRS. Entitles should reach out to TRS before the election deadline in §41.30 to ask questions and address issues related to the information that is required under this section. [~~For purposes of this section, a large school district means a school district that had 1001 or more employees at any time during the 2001 school year, as reflected on any report received by TRS from that school district for a reporting period in that school year.~~]

[~~(c) If a large school district cannot obtain the information required under subsection (a) of this section, the large school district must obtain a letter from the insurer or third-party administrator stating that the insurer or third-party administrator cannot legally provide that information to the large school district. The large school district must submit that letter to TRS in lieu of the requested information in subsection (a) of this section.~~]

(c) [~~(d)~~] TRS will not deny an entity's [~~a large school district's~~] request to participate in TRS-ActiveCare based on any information provided to TRS in accordance with the requirements of this section.

[~~(e) TRS may delay a large school district's effective date of participation in TRS-ActiveCare if the school district does not provide the information required by this section within the time frames prescribed in subsection (a) of this section.~~]

(d) [~~(f)~~] TRS may prescribe the form in which entities [~~large school districts~~] must submit the information required by this section.

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 August 2, 2021.

TRD-202103001
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 542-6292

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34 TAC §41.35

The Board of Trustees of the Teacher Retirement System of Texas (TRS) proposes amendments to §41.35, concerning Coverage Plans.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments is to clarify TRS rate setting procedures. Proposed amendments to §41.35 provides that TRS may determine different rates and premiums applicable to entities or potential entities based on specific risks, regional factors, and other underwriting considerations.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended rule will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed amended rule.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amended rule will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of the adopting the amended rule will be to remedy minor issues identified in the most recent election and to ensure the rule is consistent with current TRS election practices. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed amended rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amended rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amended rule is in effect, the proposed amendments will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed amended rule, therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rule because it does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

STATUTORY AUTHORITY

The amendments are proposed under the authority of Insurance Code §1579.052, which allows the trustee to adopt rules relating to the program as considered necessary by the trustee and requires the trustee to take the actions it considers necessary to devise, implement, and administer the program; and Chapter 825, Texas Government Code, which governs the administration of TRS, §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The proposed amendments affect Chapter 1579, Insurance Code, which establishes the Texas School Employees Uniform Group Health Coverage (TRS-ActiveCare), §1579.101 which requires the trustee to establish plans of group coverage for employees participating in the program and their dependents; provide tiers of coverage; define the requirements of each coverage plan and tier of coverage; and provide comparable coverage plans of each tier of coverage.

§41.35. Coverage Plans.

(a) TRS-ActiveCare shall include at least two coverage plans, including a catastrophic care coverage plan and a primary care coverage plan, in accordance with Chapter 1579, Insurance Code. The coverages provided for eligible persons under the plans offered will include, but are not limited to, basic medical expense coverage and prescription drug coverage, in accordance with terms, conditions, and limitations adopted by resolution of the trustee.

(b) TRS-ActiveCare may also include additional plans for health-care coverage under terms, conditions and limitations adopted by resolution of the trustee.

(c) The coverage plans offered under TRS-ActiveCare will each include at least two of the following rating tiers:

(1) Employee only;

(2) Employee and spouse;

(3) Employee and children;

(4) Employee and family.

(d) TRS may not offer optional coverages, other than optional permanent life insurance, optional long-term care insurance, and optional disability insurance to employees participating in TRS-Active-

Care in accordance with terms, conditions and limitations adopted by resolution of the trustee.

(e) TRS may determine different rates and premiums applicable to different participating entities or potential participating entities under the TRS-ActiveCare program based on certain risks, regional factors, and other underwriting considerations.

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 July 30, 2021.

TRD-202102973
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 542-6292

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CHAPTER 43. CONTESTED CASES

34 TAC §43.1, §43.45

The Teacher Retirement System of Texas (TRS) proposes amendments to 34 TAC §43.1, relating to administrative review of individual requests and 34 TAC §43.45, relating to proposals for decision, exceptions, and appeals to the Board of Trustees.

BACKGROUND AND PURPOSE

Chapter 43 addresses procedures for appeals of administrative decisions and contested cases relating to the TRS pension plan. TRS proposes amendments to §43.1 and §43.45 to implement amendments to Government Code §825.521, by House Bill 1585, enacted by the 87th Texas Legislature, which requires TRS to modify the deadline for members or retirees to appeal a decision or determination by TRS staff to afford the member or retiree at least the same amount of time to file an appeal as TRS had to issue a decision in the appeal.

The amendments to Government Code §825.521 require TRS to make amendments to §43.1 and §43.5 to mirror the amendment to 34 Texas Administrative Code §43.5 necessitated by House Bill 2629 in 2019. House Bill 2629 created Section 825.521 and required the TRS Board of Trustees to adopt rules ensuring that the deadline for filing an appeal of a final administrative decision afford a member or retiree at least the same amount of time as TRS took to issue the final administrative decision. As required by the amendments to Government Code §825.521 made by House Bill 1585, the amendments to §43.1 and §43.45 expand the deadline structure from §43.5 to also apply to appeals of the decision of a department director and appeals of a decision in a contested case hearing rendered by the executive director following the issuance of a proposal for decision by an administrative law judge.

In the amended §43.1(c), a member or retiree must file their appeal of a department manager's decision by the later of either 45 days after the decision of a department manager is mailed or the number of days after the date the decision of the department manager is mailed equal to the number of days it took TRS to issue the decision of the department manager. Amended §43.1(d) provides that the number of days it took TRS to issue the decision of the department manager is calculated from the date TRS received a person's appeal to the date the decision of the department manager is mailed.

In amended §43.45(d), the member or retiree must file their appeal of the executive director's decision by the later of either 20 days after the date the decision of the executive director is served or the number of days after the date the decision of the executive director is served equal to the number of days it took the executive director to render the decision. Amended §43.45(f) provides the method for calculating that the number of days it took the executive director to render a decision. Amended §43.45(e) is a structural, nonsubstantive change to the rule required due to the changes to §43.45(d).

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended rule will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed amended rule.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amended rules will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the amended rules will be to conform the administrative appeals process with new statutory requirements. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed amended rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amended rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amended rules will be in effect, the proposed amendments will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed amended rule, therefore, a takings impact assessment is not required under Government Code §2007.043.

COST TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rules because the amended

rules do not impose a cost on regulated persons and the amended rules are necessary to implement legislation and the legislature did not specifically state that §2001.0045 applies to these rules.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

STATUTORY AUTHORITY

The proposed amended rules are proposed under the authority of Government Code §825.102, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the Board; Government Code §825.115(b), which authorizes the Board to adopt rules relating to the authority of the Board to make a final decision in a contested case or delegate its authority; and under Government Code §825.521, which provides that in adopting rules relating to appeals of a determination or decision of the retirement system by the system's staff, the board of trustees shall ensure that rules establishing deadlines for the filing of an appeal afford a member or retiree at least the same amount of time to file an appeal as the retirement system has to issue the retirement system's decision.

CROSS-REFERENCE TO STATUTE

The proposed amended rules implement the following sections or chapters of the Government Code: §825.101, concerning the general administration of the retirement system; §825.115, concerning the applicability of certain laws; and §825.521, concerning the deadline to appeal administrative decisions of the retirement system.

§43.1. Administrative Review of Individual Requests.

(a) Organization. TRS is divided into administrative divisions, which are further divided into departments, for the efficient implementation of its duties. Any person who desires any action from TRS must consult with the proper department within TRS and comply with all proper requirements for completing forms and providing information to that department.

(b) Final administrative decision by chief benefit officer. In the event that a person is adversely affected by a determination, decision, or action of department personnel, the person may appeal the determination, decision, or action to the appropriate manager within the department, and then to the chief benefit officer of TRS. The chief benefit officer shall mail a final written administrative decision, which shall include:

(1) the chief benefit officer's determination regarding the person's appeal and reasons for denying the appeal, if applicable; and

(2) a statement that if the person is adversely affected by the decision, the person may request an adjudicative hearing to appeal the decision and the deadline for doing so.

(c) An appeal to the chief benefit officer as described by subsection (b) of this section must be submitted by the later of:

(1) 45 days after the date the decision of the department manager is mailed; or

(2) the number of days after the date the decision of the department manager is mailed equal to the number of days it took TRS to issue the decision of the department manager.

(d) The number of days it took TRS to issue the decision of the department manager is calculated from the date TRS received the person's appeal of the determination, decision, or action of department personnel to the date TRS mailed the decision of the department manager.

(e) [~~(c)~~] A person adversely affected by a decision of the chief benefit officer may request an adjudicative hearing to appeal the decision of the chief benefit officer as provided in §43.5 of this chapter (relating to Request for Adjudicative Hearing). The deputy director shall determine whether the appeal should be docketed and set for a contested case hearing pursuant to §43.9 of this chapter (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting).

(f) [~~(d)~~] Final administrative decision by Medical Board. In the event that the Medical Board does not certify disability of a member under Government Code, §824.303(b), or the Medical Board certifies that a disability retiree is no longer mentally or physically incapacitated for the performance of duty under Government Code, §824.307(a), the member or retiree may request reconsideration and submit additional information to the Medical Board. The Medical Board shall consider a request for reconsideration and additional information and make a determination on the disability of the member or retiree. If a request for reconsideration has been denied, a member or retiree may appeal the decision by requesting an adjudicative hearing as provided in §43.5 of this chapter (relating to Request for Adjudicative Hearing). The deputy director shall determine whether the appeal should be docketed and set for a contested case hearing pursuant to §43.9 of this chapter (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting).

(g) [~~(e)~~] Applicability. The procedures of this chapter apply only to administrative decisions, appeals, and adjudicative hearings relating to the TRS pension plan, unless rules relating to other programs specifically adopt by reference the provisions of this chapter.

§43.45. Proposals for Decision, Exceptions, and Appeals to the Board of Trustees.

(a) The administrative law judge shall issue a proposal for decision with proposed conclusions of law and findings of fact in accordance with Government Code, Chapter 2001 and other applicable law.

(b) Exceptions to the proposal for decision shall be filed with TRS, directed to the attention of the executive director, within 15 days of the date the proposal for decision was issued. Replies to any exception shall be filed with TRS within 15 days of the date the exception is filed. Exceptions shall state with specificity any error of fact or law alleged to have been made by the administrative law judge, and specific references shall be given to exhibit numbers and pages and to testimony where supporting evidence is found. References to testimony shall include the witness name and transcript page and line, if a transcript was prepared; if no transcript was prepared, testimony shall be identified at least by witness name, as well as any other means that may assist in verifying assertions regarding the testimony.

(c) The executive director shall render a decision in the proceeding, except that in a proceeding relating to eligibility for disability retirement, the board of trustees shall render a decision following issuance of a proposal for decision. The executive director or the board of trustees may accept or modify the proposed conclusions of law or proposed findings of fact or may vacate or modify an order issued by an administrative law judge in the manner set forth in subsection (f) of this section. If changes are made, the decision shall state in writing the specific reason and legal basis for each change. A copy of the decision shall be served on the parties.

(d) Any party adversely affected by a decision of the executive director in a docketed appeal may appeal the decision to the board of trustees, unless by statute or other rule the decision of the executive director is the final decision of TRS. Written notice of appeal must be filed with the executive director by the [no] later of: [than]

(1) 20 days after the decision of the executive director is mailed; or [served.]

(2) the number of days after the date the decision of the executive director is mailed equal to the number of days it took the executive director to render the decision in the proceeding.

(e) If notice of appeal is timely filed, the decision of the executive director shall serve as a proposal for decision to the board.

(f) The number of days it took the executive director to render the decision in a proceeding is calculated from:

(1) if exceptions to a proposal for decision are not filed, the date of the deadline to file exceptions to a proposal for decision in the proceeding under subsection (b) of this section to the date the decision of the executive director is mailed; or,

(2) if exceptions to a proposal for decision are filed, the date the administrative law judge takes action on the filed exceptions to the date the decision of the executive director is mailed.

(g) [(e)] If a decision of the executive director is appealed, the parties may file additional exceptions or briefs and replies if the executive director modified the administrative law judge's proposed findings of fact or conclusions of law. Additional exceptions or briefs must be filed and served at the same time as the notice of appeal. Replies shall be filed and served within 15 days of the filing of the notice of appeal and exceptions or briefs. The executive director may modify the filing deadlines.

(h) [(f)] The final decision in an appeal shall be based upon the existing record in the case. In its sole discretion, the board of trustees or the executive director, as applicable, may take the following actions:

(1) modify, refuse to accept, or delete any proposed finding of fact or conclusion of law made by the administrative law judge;

(2) make alternative findings of fact and conclusions of law;

(3) vacate or modify an order issued by the administrative law judge; and

(4) make a final decision on a contested case.

(i) [(g)] In exercising its discretion, the board of trustees or the executive director, as applicable, may consider but is not limited to the following grounds for changing a finding of fact or conclusion of law or for making a final decision in a contested case that is contrary to the recommendation of the administrative law judge:

(1) the administrative law judge did not properly apply or interpret applicable law, retirement system rules, written policies provided to the administrative law judge, or prior administrative decisions;

(2) a prior administrative decision on which the administrative law judge relied is incorrect or should be changed;

(3) a technical error in a finding of fact should be changed;

(4) a finding or conclusion or other action of the administrative law judge would alter the terms of the plan; or

(5) the change is pursuant to a fiduciary responsibility.

(j) [(h)] An administrative decision of TRS staff, a decision by the Medical Board, or a decision by the executive director is the final decision of TRS unless a party exhausts any right to appeal a matter to the board of trustees.

(k) [(i)] An appeal to the Board of Trustees shall be considered in open meeting to the extent required by law. A party who appeals to the Board of Trustees consents to the public discussion of all relevant facts, including information in the member's file that may otherwise be confidential by law. The board in its sole discretion may determine whether to hear oral argument on an appeal. In making that determination, the board may consider if confidential information of a TRS participant who is not a party to the appeal may be disclosed during oral argument.

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 July 30, 2021.

TRD-202102977
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 542-6560

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.1

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 421, Standards For Certification, concerning §421.1 Procedures for Meetings.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments to rule §421.1 is to provide information regarding the appointment of advisory committees and ad hoc committees by the commission and procedures for meetings. These amendments will also implement Senate Bill 709, 87th Regular Legislative Session, which amended Texas Government Code §419.008(f), regarding advisory committees, and implement one of the agency's Sunset review recommendations.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Executive Director, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years

the amendments are in effect the public benefit will be more accurate, clear, and concise rules regarding the appointment of any advisory committee or ad hoc committee appointed by the commission.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amended section is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

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

(2) the rules will not create or eliminate any existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriation;

(4) the rules will not result in a decrease in fees paid to the agency;

(5) the rules will not create a new regulation;

(6) the rules will not expand a regulation;

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

(8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal 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, this proposal does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

COSTS TO REGULATED PERSONS

The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register,* to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to deborah.cowan@tcfp.texas.gov.

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code, §419.008(f), which authorizes the commission to appoint advisory committees to assist it in the performance of its duties.

CROSS REFERENCE TO STATUTE

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

§421.1. Procedures for Meetings.

(a) The Commission may maintain advisory committees and ad hoc committees to assist with rulemaking, curriculum development, and the performance of the Commission's duties. These committee names, make up, term limits, roles and meeting requirements will be outlined within this rule. These committees shall exist for no more than five (5) years and shall be reviewed and evaluated for continuance before the end of the fifth year.

(b) [~~(a)~~] Time and place. The committees [~~Fire Fighter Advisory Committee and the Curriculum and Testing Committee~~] shall meet at such time and place in the State of Texas as they deem proper. [~~The Fire Fighter Advisory Committee shall meet at least twice each calendar year.~~]

(c) [~~(b)~~] Meeting called. Meetings shall be called by the chairman, by the Commission, or upon the written request of a quorum of [~~five~~] members.

(d) [~~(c)~~] Quorum. A majority of members shall constitute a quorum.

(e) [~~(d)~~] Members. Committee members serve at the will of the Commission and may serve six-year staggered terms but may not serve more than two (2) consecutive terms. [~~The Fire Fighter Advisory Committee shall consist of nine members appointed by the Commission. The Curriculum and Testing Committee shall consist of members appointed by the Commission upon the recommendation of the Fire Fighter Advisory Committee. Committee members serve at the will of the Commission.~~]

(f) [~~(e)~~] Officers. Committee Officers [~~of the Fire Fighter Advisory Committee and the Curriculum and Testing Committee~~] shall consist of a chairman[~~,~~] and vice-chairman appointed by the Commission. [~~, and secretary. Each committee shall elect its officers from the appointed members at its first meeting and thereafter at its first meeting following January 1 of each year or upon the vacancy of an office.~~]

(g) [~~(f)~~] Responsibility. Committee responsibilities shall be established by the Commission. [~~The Fire Fighter Advisory Committee shall review Commission rules relating to fire protection personnel and fire departments and recommend changes in the rules to the Commission.~~]

(h) [~~(g)~~] Effective Date. All committees will have designated effective dates not to exceed five years without review and reestablishment by the Commission. [~~Rules shall become effective no sooner than 20 days after filing with the *Texas Register* for final adoption. The committee or Commission may recommend a later effective date.~~]

(i) [~~(h)~~] Removal. It is a ground for removal from an advisory committee appointed by the Commission if a member is absent from more than half of the regularly scheduled committee meetings that the

member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the committee.

(j) Effective in 2021, the Commission established three (3) advisory committees, the Curriculum and Testing, Firefighter Advisory, and Health and Wellness. These committees will expire in 2026 unless reviewed and reestablished by the Commission. The Commission has established two (2) ad hoc committees, 427 and 435, which will exist for the period of time needed, not to exceed two years.

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

Filed with the Office of the Secretary of State on July 28, 2021.

TRD-202102902
Michael Wisko
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 936-3812

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CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.5

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 441, Continuing Education, concerning §441.5 Requirements.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments to rule §441.5 is to add a requirement to review the most recent copy of the injury report as part of the continuing education requirements for renewal of fire protection personnel certifications. The intent of this requirement is to draw attention to the top injuries to fire protection personnel contained in the report to prevent future injuries.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Executive Director, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be the result in fewer fire fighter injuries and fatalities across the state resulting in savings to the cities.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

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

(2) the rules will not create or eliminate any existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriation;

(4) the rules will not result in a decrease in fees paid to the agency;

(5) the rules will not create a new regulation;

(6) the rules will not expand a regulation;

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

(8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal 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, this proposal does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

COSTS TO REGULATED PERSONS

The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register,* to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to deborah.cowan@tcfp.texas.gov.

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.034, which authorizes the commission to adopt rules establishing the requirements for certification renewal.

CROSS REFERENCE TO STATUTE

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

§441.5. Requirements.

(a) Continuing education shall be required in order to renew certification.

(b) The continuing education requirement for renewal shall consist of a minimum of 18 hours of training to be conducted during the certification period. Of the 18 hours, two hours shall be a review of the most recent TCFP injury report, with a focus on the top three leading causes of injuries during the reporting period. All documentation of training used to satisfy the continuing education requirements must be maintained for a period of three years from the date of the training. Continuing education records shall be maintained by the department in accordance with the Texas State Library and Archives Commission, State and Local Records Management Division, Records Schedule, or Local Schedule (GR 1050-28), whichever is greater.

(c) Level 1 training must be conducted by a certified instructor. Interactive computer-based continuing education training that is supervised and verified by a certified instructor is acceptable.

(d) The continuing education program of a regulated entity must be administered and maintained in accordance with commission rule by a certified instructor.

(e) No more than four hours per year in any one subject of Level 1 training may be counted toward the continuing education requirement for a particular certification.

(f) There shall be no "hour per subject limit" placed on Level 2 courses, except that emergency medical courses shall be limited to four hours per year.

(g) The head of a fire department may select subject matter for continuing education appropriate for a particular discipline.

(h) The head of a fire department must certify whether or not the individuals whose certificates are being renewed have complied with the continuing education requirements of this chapter on the certification renewal document. Unless exempted from the continuing education requirements, an individual who fails to comply with the continuing education requirements in this chapter shall be notified by the commission of the failure to comply.

(i) After notification from the commission of a failure to comply with continuing education requirements, an individual who holds a certificate is prohibited from performing any duties authorized by a required certificate until such time as the deficiency has been resolved and written documentation is furnished by the department head for approval by the commission. Continuing education hours obtained to resolve a deficiency may not be applied to the continuing education requirements for the current certification period.

(j) Any person who is a member of a paid or volunteer fire department who is on extended leave for a cumulative period of six months or longer due to a documented illness, injury, or activation to military service may be exempted from the continuing education requirement for the applicable renewal period(s). Such exemptions shall be reported by the head of the department to the commission at renewal time, and a copy kept with the department continuing education records for three years.

(k) Any individual who is not a member of a paid or volunteer fire department who is unable to perform work, substantially similar in nature as would be performed by fire protection personnel appointed to that discipline, may be exempted from the continuing education requirement for the applicable renewal period(s). Commission staff shall determine the exemption using documentation provided by the individual and the individual's treating physician of the illness or injury that cumulatively lasts six months or longer, or by documentation of military service or activation to military service.

(l) In order to renew certification for any discipline which has a continuing education requirement stated in this chapter, an individual holder of a certificate not employed by a regulated entity must comply with the continuing education requirements for that discipline. Only 20 total hours of continuing education for each certification period in Level 1 or Level 2 subjects relating to the certification being renewed shall be required to renew all certificates the individual holds, except as provided in §441.17 of this title (relating to Continuing Education for Hazardous Materials Technician).

(m) An individual certificate holder, not employed by a regulated entity, shall submit documentation of continuing education training upon notification by the commission. An example of documentation of continuing education training may include, but not be limited to, a Certificate of Completion, a college or training facility transcript, a fire department training roster, etc. Commission staff will review and may approve or disapprove such documentation of training in accordance with applicable commission rules and/or procedures. The training for a resident of Texas at the time the continuing education training is conducted shall be administered by a commission instructor, commission certified training facility, an accredited institution of higher education, or a military or nationally recognized provider of training. The training for a nonresident of Texas[,] shall be delivered by a state fire academy, a fire department training facility, an accredited institution of higher education, or a military or nationally recognized provider of training. The individual must submit training documentation to the commission for evaluation of the equivalency of the training required by this chapter. The individual certificate holder is responsible for maintaining all of his or her [~~his/her~~] training records for a period of three years from the date of the training.

(n) If an individual has completed a commission approved academy in the 12 months prior to his or her certification expiration date, a copy of that certificate of completion will be acceptable documentation of continuing education for that certification renewal period.

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

Filed with the Office of the Secretary of State on July 28, 2021.

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Michael Wisko
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 936-3812

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER A. GENERAL

43 TAC §9.8

The Texas Department of Transportation (department) proposes amendments to 43 TAC §9.8, concerning Enhanced Contract and Performance Monitoring.

EXPLANATION OF PROPOSED AMENDMENTS

Section 9.8, Enhanced Contract and Performance Monitoring, requires the department to monitor and report to the Texas Transportation Commission (commission), on a quarterly basis, the performance and status of each contract, other than a low-bid construction and maintenance contract, that is valued at $5 million or more or that the department determines constitutes a high-risk to the department. The department has determined that due to the high volume of department contracts that are valued at $5 million or more, the dollar threshold that identifies contracts that must be monitored and reported to the commission should be increased to an amount that will meaningfully capture the department's highest dollar contracts. Accordingly, amended §9.8, Enhanced Contract and Performance Monitoring, is revised to increase the dollar threshold that identifies contracts that must be reported to the Commission from $5 million to $50 million. The department will continue to monitor and report on contracts with a lesser value that it determines constitute high-risks to the department.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that as a result of enforcing or administering the rules for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Kenneth Stewart, Director of Contract Services Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Stewart has also determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be improvements to the department's management of contracts through the identification and mitigation of risk. There are no anticipated economic costs for persons required to comply with the proposed rules.

COSTS ON REGULATED PERSONS

Mr. Stewart has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government 3 Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Stewart has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

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

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Mr. Stewart has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §9.8 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line *"Contract Risk Reporting."* The deadline for receipt of comments is 5:00 p.m. on September 13, 2021. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The rule is proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Government Code, §2261.253, which requires a state agency to adopt rules to establish a procedure to identify each contract requiring enhanced contract or performance monitoring and submit information on the contract to its governing body.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, §2261.253.

§9.8. Enhanced Contract and Performance Monitoring.

(a) The department shall monitor and report to the Texas Transportation Commission, on a quarterly basis, the performance and status of each contract, other than a low-bid construction and maintenance contract, that is valued at $50 [~~$5~~] million or more or that the department determines constitutes a high-risk to the department.

(b) The department immediately shall notify the commission of any serious issue or risk that is identified in a contract and that has not been reported in a quarterly report provided under subsection (a) of this section.

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

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

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TRD-202102927
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 463-8630

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SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

The Texas Department of Transportation (department) proposes the amendments to §§9.31 - 9.35 and §§9.38 - 9.41 and the repeal of §9.36 and §9.37, relating to Contracting for Architectural, Engineering, and Surveying Services.

EXPLANATION OF PROPOSED AMENDMENTS AND REPEAL

This rulemaking streamlines the selection process for architectural, engineering, and surveying service contracts in several ways, including by eliminating the Request for Qualifications (RFQ) and using only the Request for Proposals (RFP) as the solicitation method for professional services contracts. The response requiring a Statement of Qualifications (SOQ) is eliminated, with the Proposal being the only response format used by the department. This change will align the non-federal selection process, which is sometimes referred to as the state process, with the federal selection process and will reduce the risk of confusion by utilizing only one process for procurements. Under the federal requirements in 23 United States Code of Federal Regulations (CFR) 172, the RFQ is optional; however, the RFP is required.

Amendments allow a non-federal indefinite deliverable contract to be extended beyond five years and increase the period to issue work to four years instead of three. These changes provide flexibility by allowing the department to keep the design provider under contract to provide construction phase services.

Amendments to §9.31, Definitions, remove or amend definitions to align with the elimination of the SOQ and RFQ and other amendments. The definitions are amended to remove the terms "statements of qualifications" or "qualification" and replace with "proposal" or "proposals." The definitions for RFQ and SOQ are removed because the department is streamlining the process and is no longer using the RFQ and SOQ process. The definition for "Request for Proposal (RFP)" is clarified to identify the RFP as the advertisement for an architectural, engineering, or surveying contract. This amendment will streamline the selection processes. The definition of "solicitation" is removed since the RFP is the only advertisement format.

Amendments to §9.32, Selection Processes, Contract Types, Selection Types, and Projected Contracts, to streamline the selection processes and align the non-federal selection process with the federal selection process. Section 9.32(a) is amended to add the non-federal (state) process as a selection process and delete the comprehensive, streamlined, and accelerated selection processes. Both the non-federal and federal processes will have options for selection to be made with or without interviews. Section 9.32 is also amended to replace the term "solicitation" with "RFP" to align with a single advertisement format. Subsection (b)(1)(B) is amended to change the three-year limit on issuing work authorizations to four years after the date of contract execution. This provides flexibility by allowing the department to continue to issue work authorizations for projects that can be completed before the termination date in the contract. Subsection (b)(1)(C) adds text to maintain the limit on contracts procured using the federal selection process to a contract period of no more than five years. This addition is consistent with federal guidelines for contracts procured with the federal selection process and adds flexibility to contracts procured using the non-federal process. By allowing indefinite deliverable contracts procured using a non-federal selection process to be extended beyond five years, the department may be able to keep the design provider under contract to provide construction phase services.

Amendments to §9.33, Precertification, replace the term "solicitation" with "RFP" to align with a single advertisement format.

Amendments to §9.34, Comprehensive Process, rename the comprehensive process to the non-federal (state) process and align the section with the federal selection process. The amendments streamline the selection processes. Section 9.34 is also amended to replace the term "solicitation" with "RFP" to align with a single advertisement format. Subsection (a) is amended to delete the reference to specific deliverable contracts $1 million or more in value and allows the non-federal (state) process to be used for any contract that is not subject to the federal process. This deletion will align the non-federal selection process with the federal selection process. Subsection (b)(8)(B) is amended to add Group 17, Facilities Engineering, to the work groups that are exempted from administrative qualifications. This change aligns this type of work with the architectural exemption for contracts procured using the non-federal process.

Subsections (d), (e), (g), and (h) are amended to replace the Request for Qualifications (RFQ) and the Statement of Qualifications (SOQ) with the Request for Proposals (RFP) and proposal, respectively. These changes will streamline the selection process since the department is no longer using the RFQ and SOQ process. Subsection (g)(3) is amended to add a statement to include the prime provider's past performance scores in the evaluation of the responsive proposals. This amendment streamlines the process by incorporating the provider's past performance score early in the selection process.

Subsection (i) is amended to clarify that the department will determine whether interviews are required in the non-federal selection process. This amendment aligns the non-federal process with the federal process. New subsection (i)(1) adds the requirement for an interview for specific deliverable contracts of $5 million or more in value or any indefinite deliverable contract for higher-risk services based on complexity, anticipated project costs, number of contracts, or type of services. This amendment

aligns the non-federal process with the federal process and increases the dollar value threshold for interviews on specific deliverable contracts to streamline the interview process. Subsection (i)(3) is amended to delete the use of the prime provider's past performance scores during the interview stage of the non-federal selection process. This amendment aligns this subsection with subsection (g)(3).

Subsection (j)(1) is amended to clarify the basis for final selection dependent on whether an interview is required. These additions align the non-federal process with the federal process. Subsection (j)(2) is amended to clarify that the process for breaking ties will be using scores from either the interview or the proposal, if no interviews are required. This clarification aligns the non-federal with the federal process. The title of the section is changed to "Non-federal Process."

Amendments to §9.35, Federal Process, delete references to the "comprehensive" process and replace them with the "non-federal" process. Each paragraph is amended to reference back to the applicable paragraph in §9.34 to align the federal and non-federal selection processes. Section 9.35 is also amended to replace the term "solicitation" with "RFP" to align with a single advertisement format. The text in subsections (d), (e), and (g) is deleted and a reference to §9.34(d), §9.34(e), §9.34(h)-(j), respectively, is added. Subsections (f) and (h) are deleted. The amendments to §9.35 align the federal selection process and the non-federal selection process, but do not alter the federal selection process.

Sections 9.36 and 9.37 are repealed. The three non-federal processes (comprehensive, streamlined, and accelerated) have been replaced with a single non-federal selection process in §9.34, which has an option for including interviews. These amendments streamline the non-federal process and align it with the federal process.

Amendments to §9.38, Emergency Contract Process, and §9.39, Urgent and Critical Process, change the reference to the heading of §9.34 in accordance with the amendment of that heading made in this rulemaking.

Amendments to §9.40, Negotiations, replace the term "solicitation" with "RFP" to align with a single advertisement format and the references to the comprehensive, streamlined, or accelerated processes are replaced with references to the non-federal process to align with changes made to §9.34.

Amendments to §9.41, Contract Administration, make changes to provisions relating to performance evaluations. Amendments to subsection (d)(1) allow the evaluation of a provider employee who is involved with managing a work authorization and replace the text that requires a performance evaluation of the provider project manager and firm during the contract activity with a requirement for evaluations to be conducted at least once every 12 months. These amendments allow a department project manager to evaluate both the prime provider's project manager and a member of the prime provider's staff assigned to represent the prime provider on a work authorization, providing more flexibility to the department project manager to give feedback to the provider, and provide clarity to the department project manager for completing an annual evaluation for the provider.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that as a result of enforcing or administering the rules for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Martin L. Rodin, P.E., Professional Engineering Procurement Services Division Director, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules, and, therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Rodin has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be a streamlined selection processes for contracts for architectural, engineering, and surveying services, increased flexibility in using indefinite deliverable contracts, and clarification of the prime provider performance evaluation process.

COSTS ON REGULATED PERSONS

Mr. Rodin has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules, and, therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and, therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Rodin has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

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

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Mr. Rodin has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§9.31 - 9.35 and §§9.38 - 9.41 and the repeal of §9.36 and §9.37 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line *"PEPS Rules."* The deadline for receipt of comments is 5:00 p.m. on September 13, 2021. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

43 TAC §§9.31 - 9.35, 9.38 - 9.41

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act) and Transportation Code, §223.041.

§9.31. Definitions.

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

(1) Consultant Certification Information System (CCIS)--A computer system used to collect and store information related to the department's certification of providers.

(2) Consultant selection team (CST)--The department's team that evaluates [~~statements of qualification,~~] proposals[~~,~~] and interviews and selects the provider based on demonstrated qualifications.

(3) Department--The Texas Department of Transportation.

(4) Department project manager--A department employee who manages a project from project initiation and contracting through project close-out, including the oversight and management of deliverables and provider performance.

(5) Engineering and design related services--Program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or architectural related services; or professional services of an architectural or engineering nature that are required to or may logically or justifiably be performed or approved by a person licensed, registered, or certified to provide the services.

(6) Executive director--The executive director of the department.

(7) Indefinite deliverable contract--A contract containing a general scope of services that identifies the types of work that will later be issued under work authorizations, but does not identify deliverables, locations, or timing in sufficient detail to define the provider's responsibilities under the contract.

(8) Interview and Contract Guide (ICG)--A document provided by the department to short-listed providers that includes instructions to prepare for the interview.

(9) Multiphase contract--A project specific contract where the solicited services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.

(10) Non-listed category (NLC)--A formal classification used to define a specific sub-discipline of work and provide the minimum technical qualifications for performing the work. NLCs address project-specific work categories not covered by the standard work categories.

(11) Precertification--A department process conducted to verify that a provider meets the minimum technical requirements to perform work under a standard work category.

(12) Prime provider--A firm that provides or proposes to provide architectural, engineering, or surveying services under contract with the state.

(13) Prime provider project manager--An employee of a prime provider who serves as the point of contact for the provider to coordinate project deliverables and project performance with the department.

(14) Professional Engineering Procurement Services (PEPS) Division--The department's division responsible for overseeing procurement planning, provider selection, leading the contract negotiations, administering the contract, and processing invoices.

(15) Professional Engineering Procurement Services (PEPS) Division Director--The head of the PEPS Division.

(16) Proposal--A response to a request for proposal that provides details on a provider's specific technical approach and qualifications.

(17) Provider--A prime provider or subprovider.

(18) Relative importance factor (RIF)--The numerical weight assigned to an evaluation criterion, used by the consultant selection team to score [~~statements of qualification,~~] proposals[~~,~~] and interviews.

(19) Request for proposal (RFP)--A public announcement that advertises the department's intent to enter into an architectural, engineering, or surveying contract [~~A document provided by the department to short-listed providers that provides instructions for submitting a proposal and may include instructions to prepare for the interview~~].

[~~(20) Request for qualification (RFQ)--A public announcement that advertises the department's intent to enter into an architectural, engineering, or surveying contract and provides instructions for the preparation and submittal of a statement of qualification generally referred to as a solicitation.~~]

(20) [~~(21)~~] Short list--The list of prime providers most qualified to perform the services specified in an RFP [~~RFQ~~], as demonstrated by the proposal [~~statement of qualification~~] scores.

[~~(22) Solicitation--A request for qualification.~~]

(21) [~~(23)~~] Specific deliverable contract--A contract containing a specific scope of services that identifies deliverables, locations, and timing in sufficient detail to define the provider's responsibilities under the contract, although additional requirements may later be specified in work authorizations.

(22) [~~(24)~~] Standard work category--A formal classification, developed by the department, used to define a specific sub-group of work and provide the minimum technical qualifications for performing the work.

[(25) Statement of qualification (SOQ)--A document prepared by a prime provider, submitted in response to a request for qualification.]

(23) [(26)] Subprovider--A firm that provides or supports, or proposes to provide or support, architectural, engineering, or surveying services under contract with a prime provider.

§9.32. Selection Processes, Contract Types, Selection Types, and Projected Contracts.

(a) Selection processes. The department will issue RFPs [solicitations] and select providers under the following selection processes: non-federal under §9.34 of this subchapter (relating to Non-federal Process) [comprehensive], federal under §9.35 of this subchapter (relating to Federal Process), [streamlined, accelerated,] emergency under §9.38 of this subchapter (relating to Emergency Contract Process), and urgent and critical under §9.39 of this subchapter (relating to Urgent and Critical Process).

(b) Contract types. The department will offer three types of contracts: indefinite deliverable, specific deliverable, and multiphase.

(1) An indefinite deliverable contract may be used for a single project or for multiple projects. The RFP [solicitation] will describe the typical work types to be performed under the contract.

(A) Categorical limitations on contract dollar value may be established by the executive director or the executive director's designee.

(B) The contract period in which work authorizations may be issued may not be longer than four [three] years after the date of contract execution, unless approved by the Texas Transportation Commission.

(C) Supplemental agreements may be issued to extend the contract period, but only as necessary to complete work on an existing work authorization. The contract period for contracts procured using the process provided by §9.35 of this subchapter may not extend more than five years beyond the execution date.

(2) A specific deliverable contract may be used for a single project or for multiple projects. The RFP [solicitation] will specify the specific deliverables to be provided under the contract.

(3) A multiphase contract may be used for a single project or for multiple projects. The RFP [solicitation] will describe the services to be provided under the contract and will divide the services into phases. The specific scope of work may be established, and the associated costs negotiated and authorized, by phase as the project progresses.

(c) Selection types.

(1) Single contract selection. One contract will result from the RFP [solicitation].

(2) Multiple contract selection. More than one contract of similar work types will result from the RFP [solicitation]. The RFP [solicitation] will indicate the number and type of contracts.

(d) Projected contracts list. Quarterly, the department will publish on the department's website a list of projected contracts for architectural, engineering, and surveying services.

§9.33. Precertification.

(a) Standard work categories. Precertification establishes the minimum technical qualifications to perform work under a standard work category. The department may add, revise, or delete a standard work category.

(b) Contract eligibility.

(1) To be eligible to perform work under a standard work category, a firm providing a task leader must have active precertification status in that work category by the closing date of the RFP [solicitation].

(2) The department will not delay the selection process or the contract execution to accommodate a provider that is not in active precertification status.

(c) Precertification status of firms and employees.

(1) A firm is precertified in a standard work category only if it employs an individual precertified in that category.

(2) A firm that employs an individual who is precertified in multiple standard work categories is, by extension, precertified in each of those categories.

(3) A firm's precertification status is only applicable to the incorporated business entity that employs the individual upon whom the firm's precertification status is based and does not extend to a subsidiary, affiliate, or parent of the incorporated entity.

(4) An employee's precertification status is based solely on the individual's qualifications. A firm's qualifications may not serve as a basis for precertifying an employee.

(5) Precertification status shall transfer with the employee, should the employee leave the firm.

(d) Precertification website. The department will maintain a precertification website that will include:

(1) the definitions of the standard work categories;

(2) the minimum technical qualifications to perform work under the standard work categories; and

(3) the precertification application form, with instructions.

(e) Application and review process.

(1) To apply for precertification in a standard work category, a firm must employ an individual qualified to become precertified in that category and present the individual's qualifications in a precertification application.

(2) The department will consider the following factors in reviewing an application:

(A) the minimum technical qualifications as applicable;

(B) the individual's professional license or registration;

(C) the individual's experience and training; and

(D) any record that shows that the individual or the firm is the subject of a final administrative or judicial determination that the employee or firm has violated a statute or rule of a state licensing entity related to occupational or professional conduct.

(3) If a submitted application is incomplete or inaccurate, the firm will be given an opportunity to correct the application and provide additional information. The firm must provide the information within 30 days after the day that it receives the department's notice that the application is incomplete or inaccurate.

(4) If the information is not provided under paragraph (3) of this subsection within the 30-day period prescribed by that paragraph, the application will be processed at the end of that 30-day period with the information available.

(5) The department will make a good faith effort to make a precertification determination within 60 days after the day that the

department receives a complete and accurate application or if paragraph (4) of this subsection applies, within 60 days after the day that the 30-day period prescribed by that paragraph ends.

(f) Appeal. A firm may appeal a precertification denial to the department by submitting additional information within 30 days after the day that it receives written notification of the denial. The information must justify why precertification should be granted. The department will review the information and make a second precertification determination. A firm may file a written complaint regarding a second precertification denial to the executive director or the executive director's designee.

(g) Updates. A firm must report any change in its application information no later than 45 days after the day that the change occurs.

(h) Data management. A firm's application information will be maintained in the Consultant Certification Information System (CCIS).

(i) Annual renewal. To maintain contract eligibility, a firm must renew its precertification status no later than March 31 of each year. The firm must submit its annual renewal through the CCIS.

(1) A firm that has renewed its precertification status by the annual deadline will maintain an active precertification status in the standard work categories in which it is precertified.

(2) A firm that has not renewed its precertification by the annual deadline will be placed in inactive status.

§9.34. Non-federal [~~Comprehensive~~] Process.

(a) Applicability. The non-federal [~~comprehensive~~] process, also referred to as the state process, described under this section may be used for contracts that are [~~must be used for any specific deliverable contract that is $1 million or more in value and is~~] not subject to §9.35 of this subchapter (relating to Federal Process).

(b) Administrative qualification.

(1) Administrative qualification is a process used by the department to verify that a provider performing engineering and design related services has an indirect cost rate that meets department requirements. Except as provided by paragraph (8) of this subsection, to compete for a contract under this section a provider performing engineering and design related services either must be administratively qualified or must accept an indirect cost rate under paragraph (7) of this subsection.

(2) Factors in determining administrative qualification.

(A) A provider may demonstrate administrative qualification by an audit or by self-certification.

(i) An audit may be performed by an independent certified public accountant (CPA), an agency of the federal government, another state transportation agency, or a local transit agency. An audit performed by an independent CPA must be conducted in accordance with the current versions of 48 C.F.R. Part 31, the Generally Accepted Government Auditing Standards (GAGAS), and the American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit and Accounting Guide. The provider must provide the department with unrestricted access to the audit work papers, records, and other information as requested by the department.

(ii) Self-certification may be conducted by the provider and must include a cost report and an internal controls report. The self-certified cost report must comply with the current versions of 48 C.F.R. Part 31, the GAGAS, and the AASHTO Uniform Audit and Accounting Guide. The self-certified internal control report must certify the provider has internal controls in place within its organization. Both the cost report and the internal control report must be signed by a company officer and notarized.

(B) The audit or self-certification shall be based on the provider's fiscal year. The indirect cost rate, as approved by the department, shall become effective six months after the end of the provider's fiscal year, or immediately if filed more than six months after the end of the provider's fiscal year. It shall be effective no more than twelve months and shall expire eighteen months after the end of the fiscal year upon which it is based, except that, for the purpose of competition referred to in paragraph (1) of this subsection, negotiations referred to in subsection (b)(5) of this section, or administratively qualified under §9.35(b) of this subchapter, the department may extend an approved indirect cost rate for 90 days if the department has received the provider's annual administrative qualifications information submittal before the rate's expiration date.

(C) A provider must submit on an annual basis:

(i) a cognizant letter of concurrence issued by a state transportation agency in accordance with the AASHTO Uniform Audit and Accounting Guide; or

(ii) a compensation analysis for all executives and employees in accordance with the AASHTO Uniform Audit and Accounting Guide for which the provider may use either the National Compensation Matrix or surveys as prescribed in the AASHTO Uniform Audit and Accounting Guide.

(D) A provider's payment of a bonus or incentive compensation to an employee is allowable only if the bonus or compensation is paid under a written bonus plan that:

(i) is consistent with the AASHTO Uniform Audit and Accounting Guide that identifies eligibility requirements and provides details regarding how bonus payments are determined; and

(ii) includes an adequate description of the performance measures used to determine bonus amounts, such as employee performance evaluation ratings, contributions toward the firm's revenue growth, and responsibilities for cost containment.

(E) A provider must submit on an annual basis the salary rates for employees that it anticipates using on contracts that may be executed during the next 12-month period. The department will review the salary rates for reasonableness and consistency with industry norms and, when approved, will apply the rates to contracts negotiated within the next 12-month period. During the 12-month period, the provider must submit the salary rate for any employee who is used on a contract and whose salary rate has not been provided under this subparagraph. The department will continue to negotiate contracts on an individual basis during the initial 12-month implementation period.

(F) The department may audit the indirect cost rate of a provider under contract with, or seeking to do business with, the department. These audits will be conducted in accordance with the criteria outlined in this subsection.

(G) A provider must submit a signed Certification of Final Indirect Costs with the audit report or self-certification. The certification must follow the requirements of the Federal Highway Administration.

(H) The department will treat the cost data as confidential pursuant to 23 U.S.C. Section 112 and 23 C.F.R. Part 172.

(3) Submittal and review process for administrative qualification.

(A) A provider must submit its administrative qualification information to the department in accordance with the instructions on the department's website.

(B) Upon review of an audit report or self-certification received from a provider, the department may request additional information from the provider. If the submittal is not complete and accurate, the department will return it to the provider for correction. The provider shall submit the additional information or the corrected administrative qualification submittal within 30 days after the day that it receives the department's request. If the information is not received within the 30-day period, the department will reject and not process the administrative qualification submittal.

(C) If an administrative qualification submittal is rejected under subparagraph (B) of this paragraph, the provider may refile a corrected audit report or self-certification and shall include any previously requested information. The provider may not refile earlier than 90 days after the day that the department sends the notice rejecting the submittal.

(D) The department will make a good faith effort to complete the administrative qualification review process within 60 days after the day that it receives a complete and accurate audit report or self-certification.

(4) Administrative qualification is applicable only to the incorporated business entity upon which the indirect cost rate is based and does not extend to a subsidiary, affiliate, or parent of the incorporated entity, except as provided by this paragraph. A corporation may administratively qualify a business segment of the corporation if the business segment is not limited to a geographical area that is less than the entire state of Texas and if the corporation is able to demonstrate and justify the allocation of costs between the business segment and other corporate operations. If a corporate business segment is administratively qualified, the resulting indirect cost rate is not applicable to staff not employed by the business segment.

(5) In negotiations under §9.38 [~~9.40~~] of this subchapter (relating to Emergency Contract Process [~~Negotiations~~]), the department will use the selected firm's indirect cost rate information that is in effect at that time the negotiations begin.

(6) The department will not provide a firm's administrative qualification information, including salary information, to the department's staff conducting negotiations or the consultant selection team before the selection of that firm.

(7) Providers not administratively qualified. The department may contract with a prime provider or allow the use of a subprovider that is not administratively qualified if:

(A) the provider has been in operation, as currently organized, for less than one fiscal year and the provider accepts an indirect cost rate developed by the department; or

(B) on request by the department during the selection process, the prime provider provides written certification that the prime provider or subprovider, as applicable, does not have an indirect cost rate audit and will accept an indirect cost rate developed by the department.

(8) Exemptions to administrative qualification.

(A) A non-engineering firm is exempt from the administrative qualification requirement of this section.

(B) A provider performing a service under standard work category 18.2.1, subsurface utilities engineering, or any of the following work groups, as listed on the department's precertification website, is exempted from administrative qualification, to the extent of the service being performed:

(i) Group 6, bridge inspection;

(ii) Group 12, materials inspection and testing;

(iii) Group 14, geotechnical services;

(iv) Group 15, surveying and mapping; [~~and~~]

(v) Group 16, architecture; and [~~.~~]

(vi) Group 17, facilities engineering.

(C) The department may exempt services other than those indicated in subparagraph (B) of this paragraph on a case-by-case basis. Any request for an exemption must be received by the department by the closing date of the RFP [~~solicitation~~].

(c) Consultant selection team (CST).

(1) The department shall use a CST in selecting providers under this section.

(2) The CST shall be composed of at least three department employees.

(3) At least one CST member must be a professional engineer, for engineering contracts; a registered architect, for architectural contracts; and either a professional engineer or registered professional land surveyor, for surveying contracts.

(4) If a CST member leaves the CST during the selection process, the process may continue with the remaining members, subject to paragraph (3) of this subsection.

(d) Request for proposals [~~qualifications (RFQ)~~]. Not fewer than 14 calendar days before the RFP [~~solicitation~~] closing date, the department will post on a web-based bulletin board an RFP [~~RFQ~~] providing the contract information and specifying the requirements for preparing and submitting a proposal [~~statement of qualification~~].

(e) Proposal [~~Statement of qualification (SOQ)~~]. To be considered, a proposal [~~an SOQ~~] must comply with the requirements specified in the RFP [~~RFQ~~].

(f) Replacements.

(1) An individual may be proposed as a replacement for the prime provider project manager prior to the department's notification of firms short-listed for an interview or, if an interview is not required, prior to selection.

(2) An individual may be proposed as a replacement for a task leader prior to contract execution.

(3) A proposed replacement for the prime provider project manager must be an employee of the prime provider. A proposed replacement for a task leader must be an employee of the prime provider or its subprovider. A proposed replacement for either position must satisfy the applicable precertification and non-listed category requirements.

(g) Proposal [~~SOQ~~] screening and evaluation.

(1) The department may disqualify a proposal [~~an SOQ~~] if the department has knowledge that a firm on the project team or an employee of a firm on the project team is the subject of a final administrative or judicial determination that the firm or employee has violated a statute or rule of a state licensing entity related to occupational or professional conduct.

(2) If a proposal [~~an SOQ~~] is not disqualified under paragraph (1) of this subsection, the CST will screen the proposal [~~SOQ~~] to determine whether it complies with the requirements specified in the RFP [~~RFQ~~]. Each proposal [~~SOQ~~] that meets these requirements will be considered responsive to the RFP [~~RFQ~~] and evaluated.

(3) The CST will evaluate the responsive proposal [~~SOQ~~] according to the evaluation criteria detailed in the RFP [~~RFQ~~] based on factors the department has identified as most likely to result in the selection of the most qualified provider, including the prime provider's past performance scores, as contained in the department's database, that reflect less than satisfactory performance.

(h) Short list. The short list will consist of the most qualified providers, as indicated by the proposal [~~SOQ~~] scores.

(1) For single contract selections, the minimum number of short-listed prime providers is three, unless fewer than three prime providers submitted a responsive proposal [~~SOQ~~].

(2) For multiple contract selections, the minimum number of short-listed prime providers is the number of desired contracts plus three, unless fewer than the desired number of prime providers submitted a responsive proposal [~~SOQ~~].

(3) Notification.

(A) The department will notify each prime provider that submitted a proposal [~~an SOQ~~] whether it was short-listed.

(B) The department will notify each short-listed prime provider whether a short list meeting will be held.

(i) Short list evaluation.

(1) An interview is required for any specific deliverable contract that is $5 million or more in value or any indefinite deliverable contract for higher-risk services as determined by the department based on project complexity, anticipated project costs, number of contracts, or type of services.

(2) [~~(1)~~] The RFP will state whether an interview will be required as part of the short list evaluation. [~~Interviews. The department will evaluate the short-listed providers through interviews.~~] The department will issue an Interview and Contract Guide (ICG) to each short-listed prime provider. The ICG will provide contract information and specify the requirements for the interview.

(3) [~~(2)~~] [~~Short list evaluation criteria.~~] The CST will evaluate the interviews according to the criteria specified in the ICG[~~, including the prime provider's past performance scores in the Consultant Certification Information System database reflecting less than satisfactory performance~~].

(j) Selection.

(1) Basis of final selection.

(A) If interviews are required, the [~~The~~] CST will select the best qualified provider, as indicated by the interview [~~short list~~] scores.

(B) If interviews are not required, the CST will select the best qualified provider, as indicated by the proposal scores.

(2) Tie scores. The PEPS Division Director will break a tie using the following method.

(A) The first tie breaker will be the scores for:

(i) the interview criterion with the highest RIF; or [~~.~~]

(ii) if interviews are not required, the proposal criterion with the highest RIF.

(B) The remaining [~~interview~~] criteria shall be compared in the order of decreasing RIF until the tie is broken.

(C) If the providers have identical scores on all of the [~~interview~~] criteria, the provider will be chosen by random selection.

(3) Notification. The department will:

(A) provide written notification to the prime provider selected for contract negotiation and arrange a meeting to begin contract negotiations;

(B) provide written notification to each short-listed prime provider that was not selected, notifying the provider of the non-selection; and

(C) publish the short list and the selected provider on a web-based bulletin board.

(4) Appeal. A provider may file a written appeal concerning the selection process with the executive director or the executive director's designee as provided under §9.7 of this chapter (relating to Protest of Contract Practices or Procedures).

§9.35. Federal Process.

(a) Applicability. This section applies to engineering or design related service contract directly related to a highway construction project and reimbursed with federal-aid highway program (FAHP) funding.

(b) Administrative qualification. A firm providing engineering and design related services must be administratively qualified under §9.34(b)(2) - (6) of this subchapter (relating to Non-federal [~~Comprehensive~~] Process), or use an indirect cost rate applicable under Federal Highway Administration regulations or guidelines, by the closing date of the RFP [~~Request For Proposal~~] to compete for contracts under this section. Section 9.34(b)(7) and (8) of this subchapter do not apply to a contract under this section.

(c) Consultant selection team (CST); replacements. Section 9.34(c) and (f) of this subchapter apply to contract procurement under this section.

(d) Request for proposal (RFP). Section 9.34(d) of this subchapter applies to contract procurement under this section. [~~Not fewer than 14 calendar days before the solicitation closing date, the department will post on a web-based bulletin board an RFP providing the contract information and specifying the requirements for preparing and submitting a proposal.~~]

(e) Proposal; screening and evaluation. Section 9.34(e) and (g) of this subchapter apply to the contract procurement under this section.[~~To be considered, a proposal must comply with the requirements specified in the RFP.~~]

(f) [~~Proposal screening and evaluation.~~]

[~~(1) The department may disqualify a proposal if the department has knowledge that a firm on the project team or an employee of a firm on the project team is the subject of a final administrative or judicial determination that the firm or employee has violated a statute or rule of a state licensing entity related to occupational or professional conduct.~~]

[~~(2) If a proposal is not disqualified under paragraph (1) of this subsection, the CST will screen the proposal to determine whether it complies with the requirements specified in the RFP. Each proposal that meets these requirements will be considered responsive to the RFP and evaluated.~~]

[~~(3) The CST will evaluate the responsive proposal according to the evaluation criteria detailed in the RFP based on factors the department has identified as most likely to result in the selection of the most qualified provider.~~]

[~~(g)~~] Short list; evaluation; selection. Section §9.34(h) - (j) of this subchapter apply to the contract procurement under this section.

[~~The short list will consist of the most qualified providers, as indicated by the proposal scores.~~]

[~~(1) For single contract selections, the minimum number of short-listed prime providers is three, unless fewer than three prime providers submitted a responsive proposal.~~]

[~~(2) For multiple contract selections, the minimum number of short-listed prime providers is the number of desired contracts plus three, unless fewer that the desired number of prime providers submitted a responsive proposal.~~]

[~~(3) Notification.~~]

[~~(A) The department will notify each prime provider that submitted a proposal whether it was short-listed.~~]

[~~(B) The department will notify each short-listed prime provider whether a short list meeting will be held.~~]

[~~(h) Selection process.~~]

[~~(1) The department will determine whether interviews are required for each solicitation and notify providers in the RFP.~~]

[~~(A) If interviews are required, §9.34 (i) and (j) of this subchapter are applicable for this process.~~]

[~~(B) If no interviews are required, the CST will select the best qualified provider, as indicated by the proposal scores, which will include evaluation of the prime provider's past performance scores in the department's evaluation database reflecting less than satisfactory performance. Also, §9.34(j)(2)-(4) of this subchapter are applicable for this process.~~]

[~~(2) An interview is required for any specific deliverable contract that is $1 million or more in value or any indefinite deliverable contract for higher-risk services as determined by the department based on anticipated project costs, number of contracts, or type of services.~~]

§9.38. Emergency Contract Process.

(a) Applicability. The emergency contract process described in this section may be used when the executive director or the executive director's designee certifies in writing that an emergency situation, including a safety hazard, a substantial disruption of the orderly flow of traffic and commerce, or a risk of substantial financial loss to the department, exists, and that an architectural, engineering, or surveying services contract is needed to address the situation.

(b) Administrative qualification. If the emergency contract is an engineering or design related services contract directly related to a highway construction project and reimbursed with federal-aid highway program (FAHP) funding, a provider must be administratively qualified to compete for the contract, and §9.34(b)(2)-(6) of this subchapter (relating to Non-federal [~~Comprehensive~~] Process) applies to this section. If the contract is not such a contract, a provider need not be administratively qualified to compete for the contract, and §9.34(b) of this subchapter applies to this section.

(c) Notification.

(1) After an emergency is certified, the department will review its list of precertified firms. If there are a sufficient number of firms, the department will notify at least three of these firms.

(2) The department will inform the firms of the nature of the emergency and will provide the firms with the specifications for the remedy.

(d) Evaluation and selection. The department will evaluate each firm's qualifications and select the best qualified firm to perform the services.

§9.39. Urgent and Critical Process.

(a) Applicability. The urgent and critical process described in this section may be used when the executive director certifies in writing that an urgent and critical need exists that cannot otherwise be met, that there is sufficient objective reason to believe that a specific provider is the most qualified to perform these architectural, engineering or survey services based on that provider's demonstrated competence and qualifications, and that federal funds will not be involved in the contract. An urgent and critical need, is a circumstance that does not rise to the level of an emergency situation as described in §9.38 of this subchapter (relating to Emergency Contract Process), but does expose the department to an undue additional cost, that unless promptly addressed could escalate to an emergency situation.

(b) Administrative qualification. Providers under this section are subject to §9.34(b) of this subchapter (relating to Non-federal [~~Comprehensive~~] Process).

(c) Process.

(1) After an urgent and critical need has been identified the department will review its list of pre-certified firms and survey available information to identify firms that are most qualified to perform the work needed to resolve the urgent and critical need.

(2) The executive director will determine whether there is sufficient information to determine that one provider is objectively the most qualified to perform this work.

(3) If information is not sufficiently available for the executive director to make this determination, the department may follow the process described in §9.38(c) and (d) of this subchapter to identify the most qualified firm.

§9.40. Negotiations.

(a) Contract negotiations.

(1) A contract that is subject to §9.34 of this subchapter (relating to Non-federal Process) or §9.35 of this subchapter (relating to Federal Process) [~~§§9.34, 9.35, 9.36, or 9.37 of this subchapter (relating to Comprehensive Process, Federal Process, Streamlined Process, or Accelerated Process, respectively)~~] will be negotiated in accordance with this subsection.

(2) The department will enter negotiations with a selected prime provider to establish a satisfactory contract containing a fair and reasonable price for the services.

(3) A selected prime provider shall submit to the department the actual salary rates for the proposed team members and the non-salary costs, generated internally, to be billed directly. The department will reference this information in the negotiations.

(4) The department anticipates that a satisfactory contract containing a fair and reasonable price for the services may be negotiated within 30 days after the date that a selected prime provider is notified of the selection. If an RFP [~~a solicitation~~] specifies that more than one contract will be awarded, the time for negotiating the contracts is automatically extended by a period equal to the number of additional contracts to be awarded under that RFP [~~solicitation~~] multiplied by five days. The department may grant additional extensions as required. The RFP [~~solicitation~~] may specify a shorter or longer time for the negotiations.

(5) If the department determines that a fair and reasonable price cannot be negotiated, the department will terminate negotiations with the selected prime provider and proceed under this paragraph.

(A) Single contract selection. The department will begin negotiations with the next highest-ranked prime provider. This

process will continue as necessary through the three highest-ranked prime providers. If a fair and reasonable price cannot be negotiated with any of the three highest-ranked prime providers, the proposed contract shall be canceled. If the proposed contract is canceled, it may be re-advertised.

(B) Multiple contract selection. The department will begin negotiations with the next highest-ranked prime provider not selected for a contract. This process will continue as necessary through the short-listed prime providers. If a fair and reasonable price cannot be negotiated with any of the short-listed prime providers, the proposed contract shall be canceled. If the proposed contract is canceled, it may be re-advertised.

(b) Emergency contract negotiations.

(1) Contracts subject to §9.38 of this subchapter (relating to Emergency Contract Process) will be negotiated in accordance with this subsection.

(2) The department will enter negotiations with the selected provider to establish a satisfactory contract containing a fair and reasonable price for the services.

(3) If the department determines that a fair and reasonable price cannot be negotiated, the department will terminate negotiations with the provider and begin negotiations with the next highest-ranked provider. This process will continue as necessary through the notified firms.

(4) If a fair and reasonable price cannot be negotiated with any of the notified firms, the department may take any measure necessary to identify and solicit a firm that is able to perform the services.

(c) Urgent and critical negotiations. The department will negotiate with the selected firm to establish a fair and reasonable price and the executive director will execute any agreement.

(d) Indefinite deliverable work authorization negotiations.

(1) Indefinite deliverable work authorizations will be negotiated in accordance with this subsection.

(2) The department will enter negotiations with a selected prime provider to establish a satisfactory work authorization containing a fair and reasonable price for the services.

(3) If the department determines that a fair and reasonable price cannot be negotiated, the department will terminate negotiations with the prime provider and begin negotiations with another prime provider with an indefinite deliverable contract.

§9.41. Contract Administration.

(a) Prime provider's percentage of work. A prime provider shall perform at least 30 percent of the contracted work with its own work force, unless otherwise approved by the department.

(b) Project manager replacement. The prime provider project manager may not be replaced without the prior written consent of the department.

(c) Department audits. The department may perform interim and final audits.

(d) Performance evaluations.

(1) The department project manager will document the prime provider's performance on the contract by evaluating the prime provider project manager and the firm and may include evaluation of the prime provider's employee who is assisting with the management of a work authorization. Evaluations will be conducted at least once every 12 months [~~during the ongoing contract activity~~] and at the completion of the contract.

(2) Further evaluations pertaining to project constructability may be conducted during project construction and at the completion of the construction contract.

(3) The department will give a copy of each completed performance evaluation to the prime provider for review and comment. The prime provider's comments will be entered into the department's evaluation database.

(4) Performance evaluation scores will be entered into the department's evaluation database and may be used for the purpose of provider selection.

(e) Negotiated resolution of disputes. To every extent possible, disputes between a prime provider and the department's project manager should be resolved during the course of the contract.

(f) Prime provider performance evaluation dispute review.

(1) If a resolution is not reached with the department's project manager and district engineer or division director, the prime provider may request a review by the PEPS Division Director by submitting a written request for review to the PEPS Division Director not later than 10 days after the date of receipt of a final signed performance evaluation. In the written request, the prime provider must identify the issue or error and provide supporting information.

(2) The PEPS Division Director will gather information, study relevant issues, and meet informally with the prime provider and relevant department staff. The PEPS Division Director may void the performance evaluation, request a re-evaluation or adjustment, or affirm the original performance evaluation. The PEPS Division Director will provide the decision to the prime provider in writing. The PEPS Division Director's decision is final.

(g) Resolution of contracting or compensation disputes. If resolution of a contracting or compensation dispute between the prime provider and department's project manager or district engineer is not reached, the PEPS Division Director may in the director's discretion participate in the resolution of the dispute. The prime provider may file a written claim under §9.2 of this chapter (related to Contract Claim Procedure).

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 July 29, 2021.

TRD-202102929
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 463-8630

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43 TAC §9.36, §9.37

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act) and Transportation Code, §223.041.

§9.36. Streamlined Process.

§9.37. Accelerated Process.

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 July 29, 2021.

TRD-202102928
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 12, 2021
For further information, please call: (512) 463-8630

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 22. EXAMINING BOARDS

PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 883. RENEWALS

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §883.1

The Texas Behavioral Health Executive Council withdraws the proposed amended §883.1 which appeared in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3698).

Filed with the Office of the Secretary of State on August 2, 2021.

TRD-202102999
Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Effective date: August 2, 2021
For further information, please call: (512) 305-7706

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 131. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

SUBCHAPTER A GENERAL PROVISIONS

25 TAC §131.1, §131.2

Proposed repeal of §131.1 and §131.2, published in the January 22, 2021, issue of the *Texas Register* (46 TexReg 517), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on July 29, 2021.

TRD-202102919

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SUBCHAPTER B. LICENSING REQUIREMENTS

25 TAC §§131.21 - 131.31

Proposed repeal of §§131.21 - 131.31, published in the January 22, 2021, issue of the *Texas Register* (46 TexReg 517), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on July 29, 2021.

TRD-202102920

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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §§131.41 - 131.68

Proposed repeal of §§131.41 - 131.68, published in the January 22, 2021, issue of the *Texas Register* (46 TexReg 517), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-202102921

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SUBCHAPTER D. INSPECTION AND INVESTIGATION PROCEDURES

25 TAC §131.81, §131.82

Proposed repeal of §131.81 and §131.82, published in the January 22, 2021, issue of the *Texas Register* (46 TexReg 517), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on July 29, 2021.

TRD-202102922

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SUBCHAPTER E. ENFORCEMENT

25 TAC §§131.101 - 131.109

Proposed repeal of §§131.101 - 131.109, published in the January 22, 2021, issue of the *Texas Register* (46 TexReg 517), is withdrawn. The agency failed to adopt the proposal within six

months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on July 29, 2021.

TRD-202102923

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SUBCHAPTER F. FIRE PREVENTION AND SAFETY REQUIREMENTS

25 TAC §§131.121 - 131.123

Proposed repeal of §§131.121 - 131.123, published in the January 22, 2021, issue of the *Texas Register* (46 TexReg 517), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on July 29, 2021.

TRD-202102924

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SUBCHAPTER G. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS

25 TAC §§131.141 - 131.148

Proposed repeal of §§131.141 - 131.148, published in the January 22, 2021, issue of the *Texas Register* (46 TexReg 517), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on July 29, 2021.

TRD-202102925

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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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE
SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

1 TAC §353.1302, §353.1304

The Texas Health and Human Services Commission (HHSC) adopts amendments to §353.1302, concerning Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019; and §353.1304, concerning Quality Metrics for the Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019. The sections are adopted without changes to the proposed text as published in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3333). The rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement changes to the Quality Incentive Payment Program (QIPP) quality metrics that HHSC may select for each program year as well as certain component funding allocations begining in program year five (i.e., September 1, 2021 through August 31, 2022).

Section 353.1302 is amended to adjust QIPP Component 2 and Component 3 funding allocations as follows: increase the allocation percentage from 30 percent to 40 percent in Component 2 (paid monthly); and decrease the allocation percentage from 70 percent to 60 percent in Component 3 (paid quarterly).

The additional amendments discontinue an unnecessary requirement, provide increased clarity, and ensure that the language in this section corresponds to similar language in other sections of Subchapter O.

Section 353.1304 is amended to remove set types of quality metrics and related performance requirements for each program year in favor of a public notice and hearing process. This change allows the program to be adapted on an annual basis to ensure quality objectives are continually improved. This amendment also clarifies HHSC's validation requirements for reviews of self-reported data in the program.

COMMENTS

The 31-day comment period ended June 28, 2021.

During this period, HHSC received comments regarding the proposed amendment to §353.1304 from three commenters, including The Independent Coalition of Nursing Home Providers, AARP-TX, and the Office of the State Long-Term Care Ombudsman. A summary of the comments relating to §353.1304 and HHSC's responses follows.

Comment: A commenter proposed that HHSC establish, in rule, a collaborative stakeholder workgroup process to develop metrics, potentially using the existing Nursing Home Payment Advisory Committee, and that metrics only be reviewed and updated every 24 months.

Response: HHSC declines to make the suggested change. To date, HHSC has updated the program's quality metrics every two years with input from an informal workgroup of HHSC representatives and public stakeholders. However, confining the State to this schedule and format, via rule, could prevent HHSC from making changes directed by the Centers for Medicare & Medicaid Services (CMS) or the state legislature.

Additionally, QIPP currently requires CMS approval every year and operates as an annual program; establishing in rule a fixed schedule of review and development every 24 months could give the false impression that the program functions in two-year cycles.

Comment: Commenters recommended that qualifying Registered Nurse (RN) hours be met only through in-person services and not through telehealth.

Response: HHSC declines to make the suggested change at this time. The RN coverage measures are intended to incentivize nursing facilities (NFs) to increase RN coverage on evenings and weekends. Permitting clearly defined telehealth services to meet requirements for Component 2 staffing metrics was integral to the development of the overall structure of QIPP and follows national developments in extending domains of care through technological and quality innovation. Allowing for telehealth RN coverage also incentivizes additional coverage in rural communities where in-person services might not be otherwise available.

Comment: Commenters supported the approach of HHSC designating quality metrics to allow for greater flexibility but recommended including language that would designate a staffing component for every QIPP year to include a quality metric related to overall direct care staff hours.

Response: HHSC declines to make the suggested change at this time. The Texas legislature recently directed HHSC to improve the staff-to-patient ratios in nursing facilities participating in the program by January 1, 2025. Revisions to the program's staffing measures will be included in future program years.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medi-

cal assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under the Texas Human Resources Code Chapter 32; and by Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 30, 2021.

TRD-202102969
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: August 19, 2021
Proposal publication date: May 28, 2021
For further information, please call: (512) 424-6637

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TITLE 16. ECONOMIC REGULATION

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") adopts amendments to 16 TAC §321.321, Fortune Pick (n), with changes to the proposed text as published in the June 4, 2021, issue of the *Texas Register* (46 TexReg 3488). The rule will be republished. The amendments allow for a unique winning ticket option along with the current unique winning wager option, as well as some additional flexibility for racetrack associations in how they offer this wager.

REASONED JUSTIFICATION

The reasoned justification for these amendments is providing additional options to racetracks and patrons.

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 adoption.

§321.321. Fortune Pick (n).

(a) The fortune pick (n) wager is not a parlay and has no connection with or relation to the win, place, and show pools shown on the tote board. All tickets on the fortune pick (n) shall be calculated as a separate pool.

(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.

(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) 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) 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) 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) 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 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.

(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.

(j) 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. If there is no unique winning wager or unique winning ticket, as appropriate based on the association's election, 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) If the fortune pick (n) minor pool cannot be distributed in accordance with subsection (j) of this section, 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) 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. If there is no unique winning wager or unique winning ticket, as appropriate, 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.

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

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

(2) 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) 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) 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) is 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 (q) of the section.

(p) 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) 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.

(q) 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 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.

(r) 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. 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. The designation of the date and performance must be made prior to the start of the association's next live racing meet.

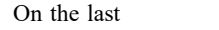
(s) Except for refunds required by this section, a fortune pick (n) ticket may not be sold, exchanged, or canceled after the close of wagering on the first of the fortune pick (n) races.

(t) 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 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 July 28, 2021.

TRD-202102914
Chuck Trout
Executive Director
Texas Racing Commission
Effective date: August 17, 2021
Proposal publication date: June 4, 2021
For further information, please call: (512) 833-6699



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §§553.1 - 553.6, 553.11 - 553.22, 553.41 - 553.44, 553.51, 553.53, 553.54, 553.81 - 553.83, 553.102,

553.103, 553.105, 553.106, 553.123 - 553.129, 553.151, 553.152, 553.201 - 553.220, 553.251 - 553.267, 553.301, 553.302, 553.351 - 553.374, 553.401, 553.402, 553.451 - 553.456, 553.501 - 553.506, 553.551, 553.601, and 553.801; and new §§553.1, 553.3, 553.5, 553.7, 553.9, 553.17, 553.19, 553.21, 553.23, 553.25, 553.27, 553.29, 553.31, 553.33, 553.35, 553.37, 553.39, 553.41, 553.43, 553.47, 553.253, 553.255, 553.257, 553.259, 553.261, 553.263, 553.265, 553.267, 553.269, 553.271, 553.272, 553.273, 553.275, 553.301, 553.303, 553.305, 553.307, 553.309, 553.311, 553.327, 553.329, 553.331, 553.333, 553.335, 553.337, 553.351, 553.353, 553.401, 553.403, 553.405, 553.407, 553.409, 553.411, 553.513, 553.415, 553.417, 553.419, 553.421, 553.423, 553.425, 553.427, 553.429, 553.431, 553.433, 553.435, 553.437, 553.439, 553.451, 553.453, 553.455, 553.457, 553.459, 553.461, 553.463, 553.465, 553.467, 553.469, 553.471, 553.473, 553.475, 553.477, 553.479, 553.481, 553.483, 553.501, 553.503, 553.551, 553.553, 553.555, 553.557, 553.559, 553.561, 553.563, 553.565, 553.567, 553.569, 553.571, 553.573, 553.575, 553.577, 553.579, 553.581, 553.583, 553.585, 553.587, 553.589, 553.591, 553.593, 553.595, 553.597, 553.601, 553.603, 553.651, 553.653, 553.655, 553.657, 553.659, 553.661, 553.701, 553.703, 553.705, 553.707, 553.709, 553.711, 553.751, and 553.801, in Title 26, Texas Administrative Code (TAC), Chapter 553, Licensing Standards for Assisted Living Facilities.

New §§553.3, 553.7, 553.17, 553.37, 553.259, 553.261, 553.263, 553.267, 553.275, 553.335, 553.337, and 553.589 are adopted with changes to the proposed text as published in the January 29, 2021, issue of the *Texas Register* (46 TexReg 704). These rules will be republished.

New §§553.1, 553.5, 553.9, 553.19, 553.21, 553.23, 553.25, 553.27, 553.29, 553.31, 553.33, 553.35, 553.39, 553.41, 553.43, 553.47, 553.253, 553.255, 553.257, 553.265, 553.269, 553.271, 553.272, 553.273, 553.301, 553.303, 553.305, 553.307, 553.309, 553.311, 553.327, 553.329, 553.331, 553.333, 553.337, 553.351, 553.353, 553.401, 553.403, 553.405, 553.407, 553.409, 553.411, 553.513, 553.415, 553.417, 553.419, 553.421, 553.423, 553.425, 553.427, 553.429, 553.431, 553.433, 553.435, 553.437, 553.439, 553.451, 553.453, 553.455, 553.457, 553.459, 553.461, 553.463, 553.465, 553.467, 553.469, 553.471, 553.473, 553.475, 553.477, 553.479, 553.481, 553.483, 553.501, 553.503, 553.551, 553.553, 553.555, 553.557, 553.559, 553.561, 553.563, 553.565, 553.567, 553.569, 553.571, 553.573, 553.575, 553.577, 553.579, 553.581, 553.583, 553.585, 553.587, 553.591, 553.593, 553.595, 553.597, 553.601, 553.603, 553.651, 553.653, 553.655, 553.657, 553.659, 553.661, 553.701, 553.703, 553.705, 553.707, 553.709, 553.711, 553.751, and 553.801 are adopted without changes to the proposed text as published in the January 29, 2021, issue of the *Texas Register* (46 TexReg 704). These rules will not be republished. Also, the repealed rules will not be republished.

BACKGROUND AND JUSTIFICATION

The repeals and new rules are necessary to reorganize the chapter, in order to facilitate easier navigation of the rules and to comply with changes to Texas Health and Safety Code, Chapters 81 and 247, by House Bill (H.B.) 823, 1848, and 3329, all enacted during the 86th Legislature, Regular Session, 2019. H.B. 823 requires a process for applicants for an assisted living facility license to obtain an expedited on-site health inspection not later than 21 days after the date of the request. H.B. 1848 requires an assisted living facility's infection prevention and control program to incorporate monitoring of key infectious agents, including multidrug-resistant organisms and procedures for making rapid influenza diagnostic tests available to facility residents. H.B. 3329 amends the definition of an assisted living facility to include that it may provide health maintenance activities, as defined by the Texas Board of Nursing.

The new rules update the licensure process to reflect the transition from paper applications to the use of the online licensure portal called Texas Unified Licensure Information Portal, clarify other processes relating to licensure, change the agency's name from Department of Aging and Disability Services (DADS) and Department of Health Services (DHS) to Texas Health and Human Services Commission (HHSC) throughout the chapter, and update rule references throughout the chapter as a result of the administrative transfer of the chapter from 40 TAC Chapter 92 to 26 TAC Chapter 553 in May 2019.

COMMENTS

The 31-day comment period ended March 1, 2021. During this period, HHSC received comments regarding the proposed rules from the American Association of Retired Persons and the Office of the State Long-Term Care Ombudsman. A summary of comments relating to the proposed rules and HHSC's responses follows.

Comment: Regarding §533.275, Emergency Preparedness, both commenters requested that the definitions related to Emergency Preparedness be integrated with the rest of the definitions in Chapter 553, located in §553.3, Definitions.

Response: HHSC disagrees with the comments and declines to revise the rule. Definitions relating to emergency preparedness are contained in §553.275 and not integrated into §553.3 so that providers can use §553.275 as an emergency preparedness manual they can print and keep independent of Chapter 553.

Comment: Both commenters requested that §553.275(h)(B), which requires procedures for providing power and safe ambient temperatures for residents sheltering during an emergency, define a specific temperature range that is considered a safe ambient temperature and require facilities to have an emergency generator.

Response: HHSC agrees with the comments requesting a definition for safe ambient temperature range for residents sheltering in place and is revising the rule as recommended. Current rule requires a range of 68 degrees to 82 degrees Fahrenheit. This temperature range was unintentionally deleted in the draft posted for public comment. HHSC will consider the comment concerning requiring assisted living facilities to have an emergency generator in the next phase of the reorganization of the assisted living facilities rules. The rules in this adoption represent phase one of the project. During phase two, HHSC will look at specific rule content to provide clarification to specific regulations. HHSC will begin phase two immediately upon publication of phase one in Texas Administrative Code. In order to expedite legislative implementation, phase one did not consider other requested changes to content. In phase two, HHSC will consider the requests from stakeholders, both internal and external, to update content in the chapter to better reflect the changing population in assisted living facilities, and to implement any bills im-

pacting assisted living facilities that pass in the current legislative session.

Comment: One commenter had concerns regarding changing the phrase "must not" to "may not" throughout the proposed rules, which were made to reflect Title 3 of Texas Government Code, Chapter 311, Subchapter B, §311.016, which defines "may not" as imposing "a prohibition and is synonymous with 'shall not,'" because this change is not described in the section-by-section summaries within the proposed rule published in the *Texas Register.* These references are in §§553.37(b); 553.259(a)(1); 553.261(e)(14); 553.261(g)(4); 553.335(c), and 553.337.

Response: HHSC agrees with the comment and is revising the rule accordingly.

Comment: One commenter found incorrect references to other sections in §553.17(d) and §553.33(i).

Response: HHSC agrees with the comment and is revising the rule accordingly.

HHSC edited assisted living facility services at Section 553.7(a)(2) to delete §553.7(a)(2)(C) as it is redundant and to better reflect the language in statute at Texas Health and Safety Code, Section 247.002.

SUBCHAPTER A. INTRODUCTION

26 TAC §§553.1 - 553.6

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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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SUBCHAPTER B. APPLICATION PROCEDURES

26 TAC §§553.11 - 553.22

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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SUBCHAPTER C. STANDARDS FOR LICENSURE

26 TAC §§553.41 - 553.44, 553.51, 553.53, 553.54

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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SUBCHAPTER E. INSPECTIONS, SURVEYS, AND VISITS

26 TAC §§553.81 - 553.83

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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SUBCHAPTER F. ABUSE, NEGLECT AND EXPLOITATION; COMPLAINT AND INCIDENT REPORTS AND INVESTIGATIONS

26 TAC §§553.102, 553.103, 553.105, 553.106

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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SUBCHAPTER G. MISCELLANEOUS PROVISIONS

26 TAC §§553.123 - 553.129

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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SUBCHAPTER H. ENFORCEMENT
DIVISION 1. GENERAL INFORMATION

26 TAC §553.151, §553.152

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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DIVISION 2. ACTIONS AGAINST A LICENSE: SUSPENSION

26 TAC §§553.201 - 553.220

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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DIVISION 3. ACTIONS AGAINST A LICENSE: REVOCATION

26 TAC §§553.251 - 553.267

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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DIVISION 4. ACTIONS AGAINST A LICENSE: TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS

26 TAC §553.301, §553.302

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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DIVISION 5. ACTIONS AGAINST A LICENSE: EMERGENCY LICENSE SUSPENSION AND CLOSING ORDER

26 TAC §§553.351 - 553.374

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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DIVISION 6. ACTIONS AGAINST A LICENSE: CIVIL PENALTIES

26 TAC §553.401, §553.402

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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DIVISION 7. TRUSTEES: INVOLUNTARY APPOINTMENT OF A TRUSTEE

26 TAC §§553.451 - 553.456

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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DIVISION 8. TRUSTEES: APPOINTMENT OF A TRUSTEE BY AGREEMENT

26 TAC §§553.501 - 553.506

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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DIVISION 9. ADMINISTRATIVE PENALTIES

26 TAC §553.551

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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DIVISION 10. ARBITRATION

26 TAC §553.601

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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SUBCHAPTER I. ACCESS TO RESIDENTS AND RECORDS BY THE LONG-TERM CARE OMBUDSMAN PROGRAM

26 TAC §553.801

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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 A. INTRODUCTION

26 TAC §§553.1, 553.3, 553.5, 553.7, 553.9

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

§553.3. Definitions.

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

(1) Abuse--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(1), which is an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program, as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(1), which is:

(i) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(ii) sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure), or Texas Penal Code, Chapter 22 (relating to Assaultive Offenses), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

(2) Accreditation commission--Has the meaning given in Texas Health and Safety Code §247.032.

(3) Actual harm--A negative outcome that compromises a resident's physical, mental, or emotional well-being.

(4) Advance directive--Has the meaning given in Texas Health and Safety Code §166.002.

(5) Affiliate--With respect to:

(A) a partnership, each partner thereof;

(B) a corporation, each officer, director, principal stockholder, subsidiary, or person with a disclosable interest, as the term is defined in this section; and

(C) a natural person:

(i) said person's spouse;

(ii) each partnership and each partner thereof, of which said person or any affiliate of said person is a partner; and

(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(6) Alzheimer's Assisted Living Disclosure Statement form--The HHSC-prescribed form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(7) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention (CDC), or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(8) Alzheimer's facility--A Type B facility that is certified to provide specialized services to residents with Alzheimer's disease or a related condition.

(9) Applicant--A person applying for a license to operate an assisted living facility under Texas Health and Safety Code, Chapter 247.

(10) Attendant--A facility employee who provides direct care to residents. This employee may serve other functions, including cook, janitor, porter, maid, laundry worker, security personnel, bookkeeper, activity director, and manager.

(11) Authorized electronic monitoring (AEM)--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(12) Behavioral emergency--Has the meaning given in §553.261(g)(2) of this chapter (relating to Coordination of Care).

(13) Certified ombudsman--Has the meaning given in §88.2 of this title (relating to Definitions).

(14) CFR--Code of Federal Regulations.

(15) Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(16) Commingles--The laundering of apparel or linens of two or more individuals together.

(17) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a facility or other person. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a facility;

(B) any person who is a controlling person of a management company or other business entity that operates a facility or that contracts with another person for the operation of an assisted living facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of a facility.

(18) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and about which the facility and HHSC have not been informed by the resident, by the person who placed the device in the room, or by a person who uses the device.

(19) Delegation--In the assisted living facility context, written authorization by a registered nurse (RN) acting on behalf of the facility for personal care staff to perform tasks of nursing care

in selected situations, where delegation criteria are met for the task. The delegation process includes nursing assessment of a resident in a specific situation, evaluation of the ability of the personal care staff, teaching the task to the personal care staff, ensuring supervision of the personal care staff in performing a delegated task, and re-evaluating the task at regular intervals.

(20) Dietitian--A person who currently holds a license or provisional license issued by the Texas Department of Licensing and Regulation.

(21) Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(22) Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(23) Disclosure statement--An HHSC form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding the preadmission, admission, and discharge process; resident assessment and service plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(24) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(25) Exploitation--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(3), which is the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(4), which is the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(26) Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(27) Fire suppression authority--The paid or volunteer firefighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

(28) Flame spread--The rate of fire travel along the surface of a material. This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated. Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(29) Functional disability--A mental, cognitive, or physical disability that precludes the physical performance of self-care tasks, including health maintenance activities and personal care.

(30) Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(31) Health care professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(32) Health maintenance activity (HMA)--Consistent with 22 TAC §225.4 (relating to Definitions), a task that:

(A) may be exempt from delegation based on an RN's assessment in accordance with §553.263(c) of this chapter (relating to Health Maintenance Activities); and

(B) requires a higher level of skill to perform than personal care services and, in the context of an ALF, excludes the following tasks:

(i) intermittent catheterization; and

(ii) subcutaneous, nasal, or insulin pump administration of insulin or other injectable medications prescribed in the treatment of diabetes mellitus.

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

(34) Immediate threat to the health or safety of a resident--A situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.

(35) Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. The staff are to be no more than 600 feet from the farthest resident and in the facility while on duty.

(36) Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(37) Isolated--A very limited number of residents are affected, and a very limited number of staff are involved, or the situation has occurred only occasionally.

(38) Key infectious agents--Bacteria, viruses, and other microorganisms which cause the most common infections and infectious diseases in long-term care facilities, and can be mitigated by establishing, implementing, maintaining, and enforcing proper infection, prevention, and control policies and procedures.

(39) Large facility--A facility licensed for 17 or more residents.

(40) Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(41) License holder--A person that holds a license to operate a facility.

(42) Listed--Equipment, materials, or services included in a list published by an organization concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose. The listing organization must be acceptable to

the authority having jurisdiction, including HHSC or any other state, federal, or local authority.

(43) Local code--A model building code adopted by the local building authority where the facility is constructed or located.

(44) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, transportation, or food services.

(45) Manager--The individual in charge of the day-to-day operation of the facility.

(46) Managing local ombudsman--Has the meaning given in §88.2 of this title.

(47) Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(48) Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(49) Medication assistance or supervision--The assistance or supervision of the medication regimen by facility staff. Refer to §553.261(a) of this chapter.

(50) Medication (self- or self-administration of)--The capability of a resident to administer the resident's own medication or treatments without assistance from the facility staff.

(51) Multidrug-resistant organisms--Bacteria and other microorganisms that have developed resistance to multiple types of medicine used to act against the microorganism.

(52) Neglect--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(4), which is a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(6), which is the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

(53) NFPA 101--The 2012 publication titled "NFPA 101 Life Safety Code" published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.

(54) Ombudsman intern--Has the meaning given in §88.2 of this title.

(55) Ombudsman program--Has the meaning given in §88.2 of this title.

(56) Online portal--A secure portal provided on the HHSC website for licensure activities, including for an assisted living facility applicant to submit licensure applications and information.

(57) Pattern of violation--Repeated, but not widespread in scope, failures of a facility to comply with this chapter or a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247 that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.

(58) Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(59) Personal care services--Assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person.

(60) Personal care staff--An attendant whose primary employment function is to provide personal care services.

(61) Physician--A practitioner licensed by the Texas Medical Board.

(62) Potential for minimal harm--A violation that has the potential for causing no more than a minor negative impact on a resident.

(63) Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or a physician assistant; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(64) Private and unimpeded access--Access to enter a facility or communicate with a resident outside of the hearing and view of others, without interference or obstruction from facility employees, volunteers, or contractors.

(65) Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.

(66) Rapid influenza diagnostic test--A test administered to a person with flu-like symptoms that can detect the influenza viral nucleoprotein antigen.

(67) Resident--An individual accepted for care in a facility.

(68) Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(69) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(70) Restraints--Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and are not required to treat the resident's medical symptoms. Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached or adjacent to the resident that restricts freedom of movement. Physical restraints include restraint holds.

(71) RN (registered nurse)--A person who holds a current and active license from the Texas Board of Nursing to practice professional nursing, as defined in Texas Occupations Code §301.002(2).

(72) Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

(73) Seclusion--The involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(74) Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.

(75) Short-term acute episode--An illness of less than 30 days' duration.

(76) Small facility--A facility licensed for 16 or fewer residents.

(77) Stable and predictable--A phrase describing the clinical and behavioral status of a resident that is non-fluctuating and consistent and does not require the regular presence of a registered or licensed vocational nurse.

(A) The phrase does not include within its meaning a description of the clinical and behavioral status of a resident that is expected to change rapidly or needs continuous or continual nursing assessment and evaluation.

(B) The phrase does include within its meaning a description of the condition of a resident receiving hospice care within a facility where deterioration is predictable.

(78) Staff--Employees of an assisted living facility.

(79) Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(80) State Ombudsman--Has the meaning given in §88.2 of this title.

(81) Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(82) Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(83) Vaccine Preventable Diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the CDC.

(84) Widespread in scope--A violation of Texas Health and Safety Code, Chapter 247 or a rule, standard, or order adopted under Chapter 247 that:

(A) is pervasive throughout the services provided by the facility; or

(B) represents a systemic failure by the facility that affects or has the potential to affect a large portion of or all of the residents of the facility.

(85) Willfully interfere--To act or not act to intentionally prevent, interfere with, impeded, or to attempt to intentionally prevent, interfere with, or impede.

(86) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

§553.7. Assisted Living Facility Services.

(a) An assisted living facility must:

(1) furnish, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment; and

(2) provide:

(A) personal care services; or

(B) medication administration by a person licensed or otherwise authorized in this state to administer the medication.

(b) An assisted living facility establishment may provide:

(1) assistance with or supervision of medication administration;

(2) health maintenance activities in accordance with §553.263 of this chapter (relating to Health Maintenance Activities); and

(3) skilled nursing services for the following limited purposes:

(A) coordinate resident care with an outside home and community support services agency or other health care professional;

(B) provision or delegation of personal care services and medication administration, as described in this chapter;

(C) assessment of residents to determine the care required; and

(D) delivery, for a period not to exceed 30 days, of temporary skilled nursing services for a minor illness, injury, or emergency.

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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SUBCHAPTER B. LICENSING

26 TAC §§553.17, 553.19, 553.21, 553.23, 553.25, 553.27, 553.29, 553.31, 553.33, 533.35, 553.37, 553.39, 553.41, 553.43, 553.47

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

§553.17. Criteria for Licensing.

(a) A person must be licensed to establish or operate an assisted living facility in Texas.

(1) HHSC considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as an assisted living facility, based on the following factors:

(A) common ownership;

(B) physical proximity;

(C) shared services, personnel, or equipment in any part of the facilities' operations; and

(D) any public appearance of joint operations or of a relationship between the facilities.

(2) The presence or absence of any one factor in paragraph (1) of this subsection is not conclusive.

(b) To obtain a license, a person must follow the application requirements in this subchapter and meet the criteria for a license.

(c) An applicant must affirmatively show that the applicant, license holder, controlling person, and any person required to submit background and qualification information meet the criteria and eligibility for licensing, in accordance with this section, and:

(1) the building in which the facility is housed:

(A) meets local fire ordinances;

(B) is approved by the local fire authority;

(C) meets HHSC licensing standards in accordance with Subchapter D of this chapter (relating to Facility Construction) based on an on-site inspection by HHSC; and

(D) operation of the facility meets HHSC licensing standards based on an on-site health inspection by HHSC, which must include observation of the care of a resident; or

(2) the facility meets the standards for accreditation based on an on-site accreditation survey by the accreditation commission.

(d) An applicant who chooses the option authorized in subsection (c)(2) of this section must contact HHSC to determine which accreditation commissions are available to meet the requirements of that subsection. If a license holder uses an on-site accreditation survey by an accreditation commission, as provided in this paragraph and §553.33(i) of this subchapter (relating to Renewal Procedures and Qualifications), the license holder must:

(1) provide written notification to HHSC within five working days after the license holder receives a notice of change in accreditation status from the accreditation commission; and

(2) include a copy of the notice of change with its written notification to HHSC.

(e) HHSC issues a license to a facility meeting all requirements of this chapter. The facility must not exceed the maximum allowable number of residents specified on the license.

(f) HHSC denies an application for an initial license or a renewal of a license if:

(1) the applicant, license holder, controlling person, or any person required to submit background and qualification information has been debarred or excluded from the Medicare or Medicaid programs by the federal government or a state;

(2) a court has issued an injunction prohibiting the applicant, license holder, controlling person, or any person required to submit background and qualification information from operating a facility; or

(3) during the five years preceding the date of the application, a license to operate a health care facility, long-term care facility, assisted living facility, or similar facility in any state held by the applicant, license holder, controlling person, or any person required to submit background and qualification information has been revoked.

(g) A license holder or controlling person who operates a nursing facility or an assisted living facility for which a trustee was appointed and for which emergency assistance funds, other than funds to pay the expenses of the trustee, were used is subject to exclusion from eligibility for:

(1) the issuance of an initial license for a facility for which the person has not previously held a license; and

(2) the renewal of the license of the facility for which the trustee was appointed.

(h) HHSC may deny an application for an initial license or refuse to renew a license if an applicant, license holder, controlling person, or any person required to submit background and qualification information:

(1) violates Texas Health and Safety Code, Chapter 247; a section, standard or order adopted under Chapter 247; or a license issued under Chapter 247 in either a repeated or substantial manner;

(2) commits an act described in §553.751(a)(2) - (9) of this chapter (relating to Administrative Penalties);

(3) aids, abets, or permits a substantial violation described in paragraphs (1) or (2) of this subsection about which the person had or should have had knowledge;

(4) fails to provide the required information, facts, or references;

(5) engages in the following:

(A) knowingly submits false or intentionally misleading statements to HHSC;

(B) uses subterfuge or other evasive means of filing an application for licensure;

(C) engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;

(D) knowingly conceals a material fact related to licensure; or

(E) is responsible for fraud;

(6) fails to pay the following fees, taxes, and assessments when due:

(A) license fees, as described in §553.47 of this subchapter (relating to License Fees); or

(B) franchise taxes, if applicable;

(7) during the five years preceding the date of the application, has a history in any state or other jurisdiction of any of the following:

(A) operation of a facility that has been decertified or has had its contract canceled under the Medicare or Medicaid program;

(B) federal or state long-term care facility, assisted living facility, or similar facility sanctions or penalties, including monetary penalties, involuntary downgrading of the status of a facility license, proposals to decertify, directed plans of correction, or the denial of payment for new Medicaid admissions;

(C) unsatisfied final judgments, excluding judgments wholly unrelated to the provision of care rendered in long-term care facilities;

(D) eviction involving any property or space used as a facility; or

(E) suspension of a license to operate a health care facility, long-term care facility, assisted living facility, or a similar facility;

(8) violates Texas Health and Safety Code §247.021 by operating a facility without a license; or

(9) is subject to denial or refusal as described in Chapter 560 of this title (relating to Denial or Refusal of License) during the time frames described in that chapter.

(i) Without limitation, HHSC reviews all information provided by an applicant, a license holder, a person with a disclosable interest, or a manager when considering grounds for denial of an initial license application or a renewal application in accordance with subsection (h) of this section. HHSC may grant a license if HHSC finds the applicant, license holder, person with a disclosable interest, affiliate, or manager is able to comply with the rules in this chapter.

(j) HHSC reviews final actions when considering the grounds for denial of an initial license application or renewal application in accordance with subsections (f) and (h) of this section. An action is final when routine administrative and judicial remedies are exhausted. An applicant must disclose all actions, whether pending or final.

(k) If an applicant owns multiple facilities, HHSC examines the overall record of compliance in all of the applicant's facilities. An overall record poor enough to deny issuance of a new license does not preclude the renewal of a license of a facility with a satisfactory record.

§553.37. Relocation.

(a) Relocation is the closing of a facility and the movement of its residents to another location for which the license holder does not hold a current license.

(b) A license holder must not relocate a facility without a license from HHSC for the facility at the new location.

(c) To apply for relocation, the license holder for the current location must submit an application via the online portal for an initial license for the new location in accordance with §553.23 of this subchapter (relating to Initial Application Procedures and Requirements) and full payment of the fees required in §553.47 of this subchapter (relating to License Fees). The applicant must enter the proposed date of relocation on the application, subject to issuance of a license.

(d) Residents must not be relocated until the new building has been inspected and approved as meeting the Life Safety Code licensure requirements in Subchapter D of this chapter (relating to Facility Construction).

(e) Following Life Safety Code approval by HHSC, the license holder must notify HHSC via the online portal of the date the residents will be relocated.

(f) After a facility has met standards of operations in subsection (d) of this section, HHSC staff conduct an on-site health inspection if one was not conducted within the last licensure period, to determine if the facility meets the licensure requirements for standards of operation and resident care in Subchapter E of this chapter (relating to Standards for Licensure).

(g) HHSC issues a license for the new facility if the new facility meets the standards of operations in subsections (d) and (e) of this section.

(h) The license holder must continue to maintain the license at the current location and must continue to meet all requirements for operation of the facility until HHSC has approved the relocation. The issuance of a license constitutes HHSC approval of the relocation. The license for the current location becomes invalid upon issuance of the new license for the new location. The license from the other location must be returned to HHSC.

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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SUBCHAPTER E. STANDARDS FOR LICENSURE

26 TAC §§553.253, 553.255, 553.257, 553.259, 553.261, 553.263, 553.265, 553.267, 553.269, 553.271 - 553.273, 553.275

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

§553.259. Admission Policies and Procedures.

(a) Admission policies and disclosure statement.

(1) A facility must not admit or retain a resident whose needs cannot be met by the facility and who cannot secure the necessary services from an outside resource. As part of the facility's general supervision and oversight of the physical and mental well-being of its residents, the facility remains responsible for all care provided at the facility. If the individual is appropriate for placement in a facility, then the decision that additional services are necessary and can be secured is the responsibility of facility management with written concurrence of the resident, resident's attending physician, or legal representative. Regardless of the possibility of "aging in place" or securing additional services, the facility must meet all NFPA 101 and physical plant requirements in Subchapter D of this chapter (relating to Facility Construction), and, as applicable, §553.311 (relating to Physical Plant Requirements for Alzheimer's Units), based on each resident's evacuation capabilities, except as provided in subsection (e) of this section.

(2) There must be a written admission agreement between the facility and the resident. The agreement must specify such details as services to be provided and the charges for the services. If the facility provides services and supplies that could be a Medicare benefit, the facility must provide the resident a statement that such services and supplies could be a Medicare benefit.

(3) A facility must share a copy of the facility disclosure statement, rate schedule, and individual resident service plan with outside resources that provide any additional services to a resident. Outside resources must provide facilities with a copy of their resident care plans and must document, at the facility, any services provided, on the day provided.

(4) Each resident must have a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record.

(5) The facility must secure at the time of admission of a resident the following identifying information:

(A) full name of resident;

(B) social security number;

(C) usual residence (where resident lived before admission);

(D) sex;

(E) marital status;

(F) date of birth;

(G) place of birth;

(H) usual occupation (during most of working life);

(I) family, other persons named by the resident, and physician for emergency notification;

(J) pharmacy preference; and

(K) Medicaid/Medicare number, if available.

(b) Resident assessment and service plan. Within 14 days of admission, a resident comprehensive assessment and an individual service plan for providing care, which is based on the comprehensive assessment, must be completed. The comprehensive assessment must be completed by the appropriate staff and documented on a form developed by the facility. When a facility is unable to obtain information required for the comprehensive assessment, the facility should document its attempts to obtain the information.

(1) The comprehensive assessment must include the following items:

(A) the location from which the resident was admitted;

(B) primary language;

(C) sleep-cycle issues;

(D) behavioral symptoms;

(E) psychosocial issues (i.e., a psychosocial functioning assessment that includes an assessment of mental or psychosocial adjustment difficulty; a screening for signs of depression, such as withdrawal, anger or sad mood; assessment of the resident's level of anxiety; and determining if the resident has a history of psychiatric diagnosis that required in-patient treatment);

(F) Alzheimer's disease/dementia history;

(G) activities of daily living patterns (e.g., wakened to toilet all or most nights, bathed in morning/night, shower or bath);

(H) involvement patterns and preferred activity pursuits (i.e., daily contact with relatives, friends, usually attended religious services, involved in group activities, preferred activity settings, general activity preferences);

(I) cognitive skills for daily decision-making (e.g., independent, modified independence, moderately impaired, severely impaired);

(J) communication (i.e., ability to communicate with others, communication devices);

(K) physical functioning (i.e., transfer status; ambulation status; toilet use; personal hygiene; ability to dress, feed and groom self);

(L) continence status;

(M) nutritional status (e.g., weight changes, nutritional problems or approaches);

(N) oral/dental status;

(O) diagnoses;

(P) medications (e.g., administered, supervised, self-administers);

(Q) health conditions and possible medication side effects;

(R) special treatments and procedures;

(S) hospital admissions within the past six months or since last assessment; and

(T) preventive health needs (e.g., blood pressure monitoring, hearing-vision assessment).

(2) The service plan must be approved and signed by the resident or a person responsible for the resident's health care decisions. The facility must provide care according to the service plan. The service plan must be updated annually and upon a significant change in condition, based upon an assessment of the resident.

(3) For respite clients, the facility may keep a service plan for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.

(4) Emergency admissions must be assessed, and a service plan developed for them.

(c) Resident policies.

(1) Before admitting a resident, facility staff must explain and provide a copy of the disclosure statement to the resident, family, or responsible party. A facility that provides brain injury rehabilitation services must attach to its disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitative services. The facility must document receipt of the disclosure statement.

(2) The facility must provide residents with a copy of the Resident's Bill of Rights.

(3) When a resident is admitted, the facility must provide to the resident's immediate family, and document the family's receipt of, the HHSC telephone hotline number to report suspected abuse, neglect, or exploitation, as referenced in §553.273 of this subchapter (relating to Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities).

(4) The facility must have written policies regarding residents accepted, services provided, charges, refunds, responsibilities of facility and residents, privileges of residents, and other rules and regulations.

(5) The facility must make available copies of the resident policies to staff and to residents or residents' responsible parties at time of admission. Documented notification of any changes to the policies must occur before the effective date of the changes.

(6) Before or upon admission of a resident, a facility must notify the resident and, if applicable, the resident's legally authorized representative, of HHSC rules and the facility's policies related to restraint and seclusion.

(7) The facility must provide a resident and the resident's legally authorized representative with a written copy of the facility's emergency preparedness plan or an evacuation summary, as required under §553.275(d) of this subchapter (relating to Emergency Preparedness and Response.)

(d) Advance directives.

(1) The facility must maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the facility is unwilling or unable to provide or withhold in accordance with an advance directive.

(2) The facility must provide written notice of these policies to residents at the time they are admitted to receive services from the facility.

(A) If, at the time notice is to be provided, the resident is incompetent or otherwise incapacitated and unable to receive the notice, the facility must provide the written notice, in the following order of preference, to:

(i) the resident's legal guardian;

(ii) a person responsible for the resident's health care decisions;

(iii) the resident's spouse;

(iv) the resident's adult child;

(v) the resident's parents; or

(vi) the person admitting the resident.

(B) If the facility is unable, after diligent search, to locate an individual listed under subparagraph (A) of this paragraph, the facility is not required to give notice.

(3) If a resident who was incompetent or otherwise incapacitated and unable to receive notice regarding the facility's advance directives policies later becomes able to receive the notice, the facility must provide the written notice at the time the resident becomes able to receive the notice.

(4) HHSC imposes an administrative penalty of $500 for failure to inform the resident of facility policies regarding the implementation of advance directives.

(A) HHSC sends a facility written notice of the recommendation for an administrative penalty.

(B) Within 20 days after the date on which HHSC sends written notice to a facility, the facility must give written consent to the penalty or make written request to HHSC for an administrative hearing.

(C) Hearings are held in accordance with the formal hearing procedures at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act).

(e) Inappropriate placement in Type A or Type B facilities.

(1) HHSC or a facility may determine that a resident is inappropriately placed in the facility if the resident experiences a change of condition but continues to meet the facility evacuation criteria.

(A) If HHSC determines the resident is inappropriately placed and the facility is willing to retain the resident, the facility is not required to discharge the resident if, within 10 working days after receiving the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A, from HHSC, the facility submits the following to the HHSC regional office:

(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility; and

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility.

(B) If the facility initiates the request for an inappropriately placed resident to remain in the facility, the facility must complete and date the forms described in subparagraph (A) of this paragraph and submit them to the HHSC regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the HHSC prescribed forms.

(2) HHSC or a facility may determine that a resident is inappropriately placed in the facility if the facility does not meet all requirements for the evacuation of a designated resident referenced in §553.5 of this chapter (relating to Types of Assisted Living Facilities).

(A) If, during a site visit, HHSC determines that a resident is inappropriately placed at the facility and the facility is willing to retain the resident, the facility must request an evacuation waiver, as described in subparagraph (C) of this paragraph, to the HHSC regional office within 10 working days after the date the facility receives the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A. If the facility is not willing to retain the resident, the facility must discharge the resident within 30 days after receiving the Statement of Licensing Violations and Plan of Correction and the Report of Contact.

(B) If the facility initiates the request for a resident to remain in the facility, the facility must request an evacuation waiver, as described in subparagraph (C) of this paragraph, from the HHSC regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the HHSC prescribed forms.

(C) To request an evacuation waiver for an inappropriately placed resident, a facility must submit to the HHSC regional office:

(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility;

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility;

(iv) a detailed emergency plan that explains how the facility will meet the evacuation needs of the resident, including:

(I) specific staff positions that will be on duty to assist with evacuation and their shift times;

(II) specific staff positions that will be on duty and awake at night; and

(III) specific staff training that relates to resident evacuation;

(v) a copy of an accurate facility floor plan, to scale, that labels all rooms by use and indicates the specific resident's room;

(vi) a copy of the facility's emergency evacuation plan;

(vii) a copy of the facility fire drill records for the last 12 months;

(viii) a copy of a completed Fire Marshal/State Fire Marshal Notification, Form 1127, signed by the fire authority having jurisdiction (either the local Fire Marshal or State Fire Marshal) as an acknowledgement that the fire authority has been notified that the resident's evacuation capability has changed;

(ix) a copy of a completed Fire Suppression Authority Notification, Form 1129, signed by the local fire suppression authority as an acknowledgement that the fire suppression authority has been notified that the resident's evacuation capability has changed;

(x) a copy of the resident's most recent comprehensive assessment that addresses the areas required by subsection (c) of this section and that was completed within 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(xi) the resident's service plan that addresses all aspects of the resident's care, particularly those areas identified by HHSC, including:

(I) the resident's medical condition and related nursing needs;

(II) hospitalizations within 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(III) any significant change in condition in the last 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(IV) specific staffing needs; and

(V) services that are provided by an outside provider;

(xii) any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident; and

(xiii) service plans of other residents, if requested by HHSC.

(D) A facility must meet the following criteria to receive a waiver from HHSC:

(i) The emergency plan submitted in accordance with subparagraph (C)(iv) of this paragraph must ensure that:

(I) staff is adequately trained;

(II) a sufficient number of staff are on all shifts to move all residents to a place of safety;

(III) residents will be moved to appropriate locations, given health and safety issues;

(IV) all possible locations of fire origin areas and the necessity for full evacuation of the building are addressed;

(V) the fire alarm signal is adequate;

(VI) there is an effective method for warning residents and staff during a malfunction of the building fire alarm system;

(VII) there is a method to effectively communicate the actual location of the fire; and

(VIII) the plan satisfies any other safety concerns that could have an effect on the residents' safety in the event of a fire; and

(ii) the emergency plan will not have an adverse effect on other residents of the facility who have waivers of evacuation or who have special needs that require staff assistance.

(E) HHSC reviews the documentation submitted under this subsection and notifies the facility in writing of its determination to grant or deny the waiver within 10 working days after the date the request is received in the HHSC regional office.

(F) Upon notification that HHSC has granted the evacuation waiver, the facility must immediately initiate all provisions of the proposed emergency plan. If the facility does not follow the emergency plan, and there are health and safety concerns that are not addressed, HHSC may determine that there is an immediate threat to the health or safety of a resident.

(G) HHSC reviews a waiver of evacuation during the facility's annual renewal licensing inspection.

(3) If an HHSC surveyor determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or fails to obtain the written statements or waiver required in this subsection, the facility must discharge the resident.

(A) The resident is allowed 30 days after the date of notice of discharge to move from the facility.

(B) A discharge required under this subsection must be made notwithstanding:

(i) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(ii) the terms of any contract.

(4) If a facility is required to discharge the resident because the facility has not submitted the written statements required by paragraph (1) of this subsection to the HHSC regional office, or HHSC denies the waiver as described in paragraph (2) of this subsection, HHSC may:

(A) assess an administrative penalty if HHSC determines the facility has intentionally or repeatedly disregarded the waiver process because the resident is still residing in the facility when HHSC conducts a future onsite visit; or

(B) seek other sanctions, including an emergency suspension or closing order, against the facility under Texas Health and Safety Code, Chapter 247, Subchapter C, if HHSC determines there is a significant risk and immediate threat to the health and safety of a resident of the facility.

(5) The facility's disclosure statement must notify the resident and resident's legally authorized representative of the waiver process described in this section and the facility's policies and procedures for aging in place.

(6) After the first year of employment and no later than the anniversary date of the facility manager's hire date, the manager must show evidence of annual completion of HHSC training on aging in place and retaliation.

§553.261. Coordination of Care.

(a) Medications.

(1) Administration. Medications must be administered according to physician's orders.

(A) Residents who choose not to or cannot self-administer their medications must have their medications administered by a person who:

(i) holds a current license under state law that authorizes the licensee to administer medication;

(ii) holds a current medication aide permit and who:

(I) acts under the authority of a person who holds a current nursing license under state law that authorizes the licensee to administer medication; and

(II) functions under the direct supervision of a licensed nurse on duty or on call by the facility; or

(iii) is an employee of the facility to whom medication administration has been delegated by a registered nurse, who has trained the employee to administer medications or verified their training. The delegation of the medication administration is governed by 22 TAC Chapter 225 (concerning RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions), which implements the Nursing Practice Act.

(B) Each resident's prescribed medication must be dispensed through a pharmacy or by the resident's treating physician or dentist.

(C) Physician sample medications may be given to a resident by the facility provided the medication has specific dosage instructions for the individual resident.

(D) Each resident's medications must be listed on the individual resident's medication profile record. The recorded information obtained from the prescription label must include the medication:

(i) name;

(ii) strength;

(iii) dosage;

(iv) amount received;

(v) directions for use;

(vi) route of administration;

(vii) prescription number;

(viii) pharmacy name; and

(ix) the date each medication was issued by the pharmacy.

(2) Supervision. Supervision of a resident's medication regimen by facility staff may be provided to residents who are incapable of self-administering without assistance to include and be limited to:

(A) reminders to take their medications at the prescribed time;

(B) opening containers or packages and replacing lids;

(C) pouring prescribed dosage according to medication profile record;

(D) returning medications to the proper locked areas;

(E) obtaining medications from a pharmacy; and

(F) listing on an individual resident's medication profile record the medication:

(i) name;

(ii) strength;

(iii) dosage;

(iv) amount received;

(v) directions for use;

(vi) route of administration;

(vii) prescription number;

(viii) pharmacy name; and

(ix) the date each medication was issued by the pharmacy.

(3) Self-administration.

(A) Residents who self-administer their own medications and keep them locked in their room must be counseled at least once a month by facility staff to ascertain if the residents continue to be capable of self-administering their medications or treatments and if security of medications can continue to be maintained. The facility must keep a written record of counseling.

(B) Residents who choose to keep their medications locked in the central medication storage area may be permitted entrance or access to the area for the purpose of self-administering their own medication or treatment regimen. A facility staff member must remain in or at the storage area the entire time any resident is present.

(4) General.

(A) Facility staff will immediately report to the resident's physician and responsible party any unusual reactions to medications or treatments.

(B) When the facility supervises or administers the medications, a written record must be kept when the resident does not receive or take his or her medications or treatments as prescribed. The documentation must include the date and time the dose should have been taken, and the name and strength of medication missed; however, the recording of missed doses of medication does not apply when the resident is away from the facility.

(5) Storage.

(A) The facility must provide a locked area for all medications. Examples of areas include:

(i) central storage area;

(ii) medication cart; and

(iii) resident room.

(B) Each resident's medication must be stored separately from other resident's medications within the storage area.

(C) A refrigerator must have a designated and locked storage area for medications that require refrigeration, unless it is inside a locked medication room.

(D) Poisonous substances and medications labeled for "external use only" must be stored separately within the locked medication area.

(E) If facilities store controlled drugs, facility policies and procedures must address the prevention of the diversion of the controlled drugs.

(6) Disposal.

(A) Medications no longer being used by the resident for the following reasons are to be kept separate from current medications and are to be disposed of by a registered pharmacist licensed in the State of Texas:

(i) medications discontinued by order of the physician;

(ii) medications that remain after a resident is deceased; or

(iii) medications that have passed the expiration date.

(B) Needles and hypodermic syringes with needles attached must be disposed as required by 25 TAC §§1.131 - 1.137.

(C) Medications kept in a central storage area are released to discharged residents when a receipt has been signed by the resident or responsible party.

(b) Accident, injury, or acute illness.

(1) In the event of accident or injury that requires emergency medical, dental or nursing care, or in the event of apparent death, the facility will

(A) make arrangements for emergency care or transfer to an appropriate place for treatment, such as a physician's office, clinic, or hospital;

(B) immediately notify the resident's physician and next of kin, responsible party, or agency who placed the resident in the facility; and

(C) describe and document the injury, accident, or illness on a separate report. The report must contain a statement of final disposition and be maintained on file.

(2) The facility must stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.

(3) Residents who need the services of professional nursing or medical personnel due to a temporary illness or injury may have those services delivered by persons qualified to deliver the necessary service.

(c) Health Care Professional.

(1) A health care professional may coordinate the provision of services to a resident within the professional's scope of practice and as authorized under Texas Health and Safety Code, Chapter 247, however, a facility must not provide ongoing services to a resident that are comparable to the services available in a nursing facility licensed under Texas Health and Safety Code, Chapter 242.

(2) A resident may contract with a home and community support services agency licensed under Chapter 558 of this title, or with an independent health professional, to have health care services delivered to the resident at the facility.

(d) Activities program. The facility must provide an activity or social program at least weekly for the residents.

(e) Dietary services.

(1) A person designated by the facility is responsible for the total food service of the facility.

(2) At least three meals or their equivalent must be served daily, at regular times, with no more than a 16-hour span between a substantial evening meal and breakfast the following morning. All exceptions must be specifically approved by HHSC.

(3) Menus must be planned one week in advance and must be followed. Variations from the posted menus must be documented. Menus must be prepared to provide a balanced and nutritious diet, such as that recommended by the National Food and Nutrition Board. Food must be palatable and varied. Records of menus as served must be filed and maintained for 30 days after the date of serving.

(4) Therapeutic diets as ordered by the resident's physician must be provided according to the service plan. Therapeutic diets that cannot customarily be prepared by a layperson must be calculated by a qualified dietician. Therapeutic diets that can customarily be prepared by a person in a family setting may be served by the facility.

(5) Supplies of staple foods for a minimum of a four-day period and perishable foods for a minimum of a one-day period must be maintained on the premises.

(6) Food must be obtained from sources that comply with all laws relating to food and food labeling. If food subject to spoilage is removed from its original container, it must be kept sealed and labeled. Food subject to spoilage must also be dated.

(7) Plastic containers with tight fitting lids are acceptable for storage of staple foods in the pantry.

(8) Potentially hazardous food, such as meat and milk products, must be stored at 45 degrees Fahrenheit or below. Hot food must be kept at 140 degrees Fahrenheit or above during preparation and serving. Food that is reheated must be heated to a minimum of 165 degrees Fahrenheit.

(9) Freezers must be kept at a temperature of 0 degrees Fahrenheit or below and refrigerators must be 41 degrees Fahrenheit

or below. Thermometers must be placed in the warmest area of the refrigerator and freezer to assure proper temperature.

(10) Food must be prepared and served with the least possible manual contact, with suitable utensils, and on surfaces that have been cleaned, rinsed, and sanitized before use to prevent cross-contamination.

(11) Facilities must prepare food in accordance with established food preparation practices and safety techniques.

(12) A food service employee, while infected with a communicable disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, must not work in the food service area in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(13) Effective hair restraints must be worn to prevent the contamination of food.

(14) Tobacco products must not be used in the food preparation and service areas.

(15) Kitchen employees must wash their hands before returning to work after using the lavatory.

(16) Dishwashing chemicals used in the kitchen may be stored in plastic containers if they are the original containers in which the manufacturer packaged the chemicals.

(17) Sanitary dishwashing procedures and techniques must be followed.

(18) Facilities that house 17 or more residents must comply with 25 TAC Chapter 228 (relating to Retail Food) and local health ordinances or requirements must be observed in the storage, preparation, and distribution of food; in the cleaning of dishes, equipment, and work area; and in the storage and disposal of waste.

(f) Infection prevention and control.

(1) Each facility must establish, implement, enforce, and maintain an infection prevention and control policy and procedure designated to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

(2) The facility must comply with rules regarding special waste in 25 TAC Chapter 1, Subchapter K (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(3) The facility must immediately report the name of any resident of a facility with a reportable disease as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases) to the city health officer, county health officer, or health unit director having jurisdiction, and implement appropriate infection control procedures as directed by the local health authority.

(4) The facility must have, implement, enforce, and maintain written policies for the control of communicable disease among employees and residents, which must address tuberculosis (TB) screening and provision of a safe and sanitary environment for residents and employees.

(A) If an employee contracts a communicable disease that is transmissible to residents through food handling or direct resident care, the facility must exclude the employee from providing these services for the applicable period of communicability.

(B) The facility must maintain evidence of compliance with local and state health codes or ordinances regarding employee and resident health status.

(C) The facility must screen all employees for TB within two weeks of employment and annually, according to Centers for Disease Control and Prevention (CDC) screening guidelines. All persons who provide services under an outside resource contract must, upon request of the facility, provide evidence of compliance with this requirement.

(D) The facility's policies and practices for resident TB screening must ensure compliance with the recommendations of a resident's attending physician and consistency with CDC guidelines.

(5) The facility's infection prevention and control program established under paragraph (1) of this subsection must include written policies and procedures for:

(A) monitoring key infectious agents, including multidrug-resistant organisms, as those terms are respectively defined in §553.3 of this chapter (relating to Definitions);

(B) wearing personal protective equipment, such as gloves, a gown, or a mask when called on for anticipated exposure, and properly cleaning hands before and after touching another resident;

(C) cleaning and disinfecting environmental surfaces, including door knobs, handrails, light switches, and hand held electronic control devices;

(D) using universal precautions for blood and bodily fluids; and

(E) removing soiled items (such as used tissues, wound dressings, incontinence briefs, and soiled linens) from the environment at least once daily, or more often if an infection or infectious disease is present or suspected.

(6) The facility must establish, implement, enforce, and maintain a written policy and procedures for making a rapid influenza diagnostic test, as defined in §553.3 of this chapter, available to a resident who is exhibiting flu like symptoms.

(7) Personnel must handle, store, process, and transport linens to prevent the spread of infection.

(8) A facility must use universal precautions in the care of all residents.

(9) A facility must establish, implement, enforce, and maintain a written policy to protect a resident from vaccine preventable diseases in accordance with Texas Health and Safety Code, Chapter 224.

(A) The policy must:

(i) require an employee or a contractor providing direct care to a resident to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(ii) specify the vaccines an employee or contractor is required to receive in accordance with clause (i) of this subparagraph;

(iii) include procedures for the facility to verify that an employee or contractor has complied with the policy;

(iv) include procedures for the facility to exempt an employee or contractor from the required vaccines for the medical conditions identified as contraindications or precautions by the CDC;

(v) include procedures the employee or contractor must follow to protect residents from exposure to disease for an employee or contractor who is exempt from the required vaccines, such as the use of protective equipment, like gloves and masks, based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(vi) prohibit discrimination or retaliatory action against an employee or contractor who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the CDC, except that required use of protective medical equipment, including gloves and masks, may not be considered retaliatory action;

(vii) require the facility to maintain a written or electronic record of each employee's or contractor's compliance with or exemption from the policy; and

(viii) include disciplinary actions the facility may take against an employee or contractor who fails to comply with the policy.

(B) The policy may:

(i) include procedures for an employee or contractor to be exempt from the required vaccines based on reasons of conscience, including religious beliefs; and

(ii) prohibit an employee or contractor who is exempt from the required vaccines from having contact with residents during a public health disaster, as defined in Texas Health and Safety Code §81.003.

(g) Restraints and seclusion. All restraints for purposes of behavioral management, staff convenience, or resident discipline are prohibited. Seclusion is prohibited.

(1) As provided in §553.267(a)(3) of this subchapter (relating to Rights), a facility may use physical or chemical restraints only:

(A) if the use is authorized in writing by a physician and specifies:

(i) the circumstances under which a restraint may be used; and

(ii) the duration for which the restraint may be used; or

(B) if the use is necessary in an emergency to protect the resident or others from injury.

(2) A behavioral emergency is a situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) could not reasonably have been anticipated; and

(D) is not addressed in the resident's service plan.

(3) Except in a behavioral emergency, a restraint must be administered only by qualified medical personnel.

(4) A restraint must not be administered under any circumstance if it:

(A) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(B) impairs the resident's breathing by putting pressure on the resident's torso;

(C) interferes with the resident's ability to communicate; or

(D) places the resident in a prone or supine position.

(5) If a facility uses a restraint hold in a circumstance described in paragraph (2) of this subsection, the facility must use an acceptable restraint hold.

(A) An acceptable restraint hold is a hold in which the individual's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of paragraph (4) of this subsection.

(B) After the use of restraint, the facility must:

(i) with the resident's consent, make an appointment with the resident's physician no later than the end of the first working day after the use of restraint and document in the resident's record that the appointment was made; or

(ii) if the resident refuses to see the physician, document the refusal in the resident's record.

(C) As soon as possible but no later than 24 hours after the use of restraint, the facility must notify one of the following persons, if there is such a person, that the resident has been restrained:

(i) the resident's legally authorized representative; or

(ii) an individual actively involved in the resident's care, unless the release of this information would violate other law.

(D) If, under the Health Insurance Portability and Accountability Act, the facility is a "covered entity," as defined in 45 CFR §160.103, any notification provided under subparagraph (C)(ii) of this paragraph must be to a person to whom the facility is allowed to release information under 45 CFR §164.510.

(6) In order to decrease the frequency of the use of restraint, facility staff must be aware of and adhere to the findings of the resident assessment required in §553.259(b) of this subchapter (relating to Admission Policies and Procedures) for each resident.

(7) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(8) A facility may not discharge or otherwise retaliate against:

(A) an employee, resident, or other person because the employee, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or

(B) a resident because someone on behalf of the resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.

(h) Wheelchair self-release seat belts.

(1) For the purposes of this section, a "self-release seat belt" is a seat belt on a resident's wheelchair that the resident demonstrates the ability to fasten and release without assistance. A self-release seat belt is not a restraint.

(2) Except as provided in paragraph (3) of this subsection, a facility must allow a resident to use a self-release seat belt if:

(A) the resident or the resident's legal guardian requests that the resident use a self-release seat belt;

(B) the resident consistently demonstrates the ability to fasten and release the self-release seat belt without assistance;

(C) the use of the self-release seat belt is documented in and complies with the resident's individual service plan; and

(D) the facility receives written authorization, signed by the resident or the resident's legal guardian, for the resident to use the self-release seat belt.

(3) A facility that advertises as a restraint-free facility is not required to allow a resident to use a self-release seat belt if the facility:

(A) provides a written statement to all residents that the facility is restraint-free and is not required to allow a resident to use a self-release seat belt; and

(B) makes reasonable efforts to accommodate the concerns of a resident who requests a self-release seat belt in accordance with paragraph (2) of this subsection.

(4) A facility is not required to continue to allow a resident to use a self-release seat belt in accordance with paragraph (2) of this subsection if:

(A) the resident cannot consistently demonstrate the ability to fasten and release the seat belt without assistance;

(B) the use of the self-release seat belt does not comply with the resident's individual service plan; or

(C) the resident or the resident's legal guardian revokes in writing the authorization for the resident to use the self-release seat belt.

§553.263. Health maintenance activities.

(a) A facility may allow personal care staff to perform a health maintenance activity (HMA) for a resident, without being delegated, only if:

(1) the activity is performed for a person with a functional disability as defined in §553.3 of this chapter (relating to Definitions);

(2) a registered nurse (RN) acting on behalf of the facility conducts and documents an assessment in accordance with subsection (b) of this section, and determines, based on the assessment, that the activity qualifies as an HMA not requiring delegation; and

(3) the facility ensures and documents that all the conditions and requirements of subsection (c) of this section are met:

(A) the resident, the resident's legally authorized representative, or other adult chosen by the resident, as applicable, is willing and able to direct personal care staff to perform the task without RN supervision; and

(B) the resident, the resident's legally authorized representative, or other adult chosen by the resident, as applicable, is willing and able and has agreed in writing, to participate in directing the personal care staff's actions in carrying out the HMA;

(4) the activity addresses a condition that is stable and predictable, as defined in §553.3 of this chapter; and

(5) the activity is performed for a resident who could perform the task on his or her own but for a functional disability that prevents it.

(b) The RN conducting an assessment for purposes of subsection (a)(1) of this section must conduct it in accordance with Board of Nursing rules at 22 TAC §225.6 (relating to RN Assessment of the Client).

(1) The RN's assessment must consider each element listed in 22 TAC §225.6, and all relevant aspects of the resident's environment, to develop an overall understanding of the resident's health status.

(2) In assessing each element required by paragraph (1) of this subsection, the RN may consider strength in one element to compensate for or offset a weakness in another element, as long as the RN determines that all required conditions in subsection (c) of this section are met.

(3) The RN is not required to know the identity of the personal care staff member who will perform the activity or his or her specific qualifications. The RN is not required to determine the competency of the personal care staff who will perform the activity.

(4) The RN must reassess a resident's status in accordance with this subsection any time there is a change in the resident's condition that may affect the resident's physical or cognitive abilities, or the stability or predictability of the resident's condition and, at a minimum, must reassess the resident's status:

(A) at least once annually; or

(B) at least once every six months if the resident has been diagnosed with Alzheimer's disease or a related disorder or resides in an Alzheimer's disease certified facility or unit.

(c) To meet the condition of subsection (a)(2) of this section, the RN, in addition to conducting a resident assessment meeting the requirements of subsections (a)(1) and (b) of this section, must determine and document that all of the conditions listed in 22 TAC §225.8(a)(2) (relating to Health Maintenance Activities Not Requiring Delegation) exist.

(d) If the RN determines under subsection (a)(1) of this section that an activity does not qualify as an HMA not requiring delegation, personal care staff may perform that activity for the resident only if:

(1) the RN has determined in accordance with 22 Texas Administrative Code (TAC) Chapter 225 (relating to RN Delegation to Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions) that:

(A) the activity can be delegated to a personal care staff member; and

(B) the activity constitutes the medication administration;

(2) the RN has properly delegated the task to the personal care staff member in accordance with 22 TAC Chapter 225 and §553.261(a)(1)(A)(iii) of this chapter (relating to Coordination of Care); and

(3) the medication and medication administration requirements of §553.261(a) of this chapter are otherwise met.

§553.267. Rights.

(a) Residents' Bill of Rights.

(1) A facility must:

(A) provide a copy of the Residents' Bill of Rights to each resident; and

(B) post the Residents' Bill of Rights, as provided by HHSC, in a prominent place in the facility and written in the primary language of each resident.

(2) A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, and reprisal in exercising these civil rights.

(3) Each resident in the facility has the right to:

(A) be free from physical and mental abuse, including corporal punishment or physical and chemical restraints that are administered for the purpose of discipline or convenience and not required to treat the resident's medical symptoms;

(i) A provider may use physical or chemical restraints only if the use is authorized in writing by a physician or if the use is necessary in an emergency to protect the resident or others from injury.

(ii) A physician's written authorization for the use of restraints must specify the circumstances under which the restraints may be used and the duration for which the restraints may be used.

(iii) Except in an emergency, restraints may only be administered by qualified medical personnel.

(B) participate in activities of social, religious, or community groups unless the participation interferes with the rights of others.

(C) practice the religion of the resident's choice.

(D) if intellectually disabled, with a court-appointed guardian of the person, participate in a behavior modification program involving use of restraints, consistent with subparagraph (A) of this paragraph, or adverse stimuli only with the informed consent of the guardian.

(E) be treated with respect, consideration, and recognition of his or her dignity and individuality, without regard to race, religion, national origin, sex, age, disability, marital status, or source of payment. This means that the resident:

(i) has the right to make his or her own choices regarding personal affairs, care, benefits, and services;

(ii) has the right to be free from abuse, neglect, and exploitation; and

(iii) if protective measures are required, has the right to designate a guardian or representative to ensure the right to quality stewardship of his or her affairs.

(F) a safe and decent living environment.

(G) not be prohibited from communicating in his or her native language with other residents or employees for the purpose of acquiring or providing any type of treatment, care, or services.

(H) complain about the resident's care or treatment. The complaint may be made anonymously or communicated by a person designated by the resident. The provider must promptly respond to resolve the complaint. The provider must not discriminate or take other punitive action against a resident who makes a complaint.

(I) receive and send unopened mail, and the provider must ensure that the resident's mail is sent and delivered promptly.

(J) unrestricted communication, including personal visitation with any person of the resident's choice, including family members and representatives of advocacy groups and community service organizations, at any reasonable hour.

(K) make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable.

(L) manage his or her financial affairs.

(i) The resident may authorize in writing another person to manage his or her money.

(ii) The resident may choose the manner in which his or her money is managed, including a money management program, a representative payee program, a financial power of attorney, a trust, or a similar method, and the resident may choose the least restrictive of these methods.

(iii) The resident must be given, upon request of the resident or the resident's representative, but at least quarterly, an accounting of financial transactions made on his or her behalf by the facility should the facility accept his or her written delegation of this responsibility to the facility in conformance with state law.

(M) access the resident's records, which are confidential and may not be released without the resident's consent, except:

(i) to another provider, if the resident transfers residence; or

(ii) if the release is required by another law.

(N) choose and retain a personal physician and to be fully informed in advance about treatment or care that may affect the resident's well-being.

(O) participate in developing his or her individual service plan that describes the resident's medical, nursing, and psychological needs and how the needs will be met.

(P) be given the opportunity to refuse medical treatment or services after the resident:

(i) is advised by the person providing services of the possible consequences of refusing treatment or services; and

(ii) acknowledges that he or she understands the consequences of refusing treatment or services.

(Q) unaccompanied access to a telephone at a reasonable hour or in case of an emergency or personal crisis.

(R) privacy, while attending to personal needs and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents.

(i) This right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils.

(ii) If a resident is married and the spouse is receiving similar services, the couple may share a room.

(S) retain and use personal possessions, including clothing and furnishings, as space permits, and may be limited for the health and safety of other residents.

(T) determine his or her dress, hair style, or other personal effects according to individual preference, except the resident has the responsibility to maintain personal hygiene.

(U) retain and use personal property in his or her immediate living quarters and to have an individual locked area (cabinet, closet, drawer, footlocker, etc.) in which to keep personal property.

(V) refuse to perform services for the facility, except as contracted for by the resident and operator.

(W) be informed by the provider no later than the 30th day after admission:

(i) whether the resident is entitled to benefits under Medicare or Medicaid; and

(ii) which items and services are covered by these benefits, including items or services for which the resident may not be charged.

(X) not be transferred or discharged unless:

(i) the transfer is for the resident's welfare, and the resident's needs cannot be met by the facility;

(ii) the resident's health is improved sufficiently so that services are no longer needed;

(iii) the resident's health and safety or the health and safety of another resident would be endangered if the transfer or discharge was not made;

(iv) the provider ceases to operate or to participate in the program that reimburses for the resident's treatment or care; or

(v) the resident fails, after reasonable and appropriate notice, to pay for services.

(Y) not be transferred or discharged, except in an emergency, until the 30th day after the date the facility provides written notice to the resident, the resident's legal representative, or a member of the resident's family, stating:

(i) that the facility intends to transfer or discharge the resident;

(ii) the reason for the transfer or discharge;

(iii) the effective date of the transfer or discharge;

(iv) if the resident is to be transferred, the location to which the resident will be transferred; and

(v) any appeal rights available to the resident.

(Z) leave the facility temporarily or permanently, subject to contractual or financial obligations.

(AA) have access to the State Ombudsman and a certified ombudsman.

(BB) execute an advance directive, under Texas Health and Safety Code, Chapter 166, or designate a guardian in advance of need to make decisions regarding the resident's health care should the resident become incapacitated.

(b) Providers' Bill of Rights.

(1) A facility must post a Providers' Bill of Rights in a prominent place in the facility.

(2) The Providers' Bill of Rights must provide that a provider of assisted living services has the right to:

(A) be shown consideration and respect that recognizes the dignity and individuality of the provider and the facility;

(B) terminate a resident's contract for just cause after a written 30-day notice;

(C) terminate a contract immediately, after notice to HHSC, if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of other residents of the facility, except during evening hours and on weekends or holidays, notice to HHSC must be made to 1-800-458-9858;

(D) present grievances, file complaints, or provide information to state agencies or other persons without threat of reprisal or retaliation;

(E) refuse to perform services for the resident or the resident's family other than those contracted for by the resident and the provider;

(F) contract with the community to achieve the highest level of independence, autonomy, interaction, and services to residents;

(G) access patient information concerning a client referred to the facility, which must remain confidential as provided by law;

(H) refuse a person referred to the facility if the referral is inappropriate;

(I) maintain an environment free of weapons and drugs; and

(J) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.

(c) Access to residents. The facility must allow an employee of HHSC or an employee of a local authority into the facility as necessary to provide services to a resident.

(d) Authorized electronic monitoring (AEM).

(1) A facility must permit a resident, or the resident's guardian or legal representative, to monitor the resident's room through the use of electronic monitoring devices.

(2) A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct authorized electronic monitoring.

(3) HHSC Information Regarding Authorized Electronic Monitoring form must be signed by or on behalf of all new residents upon admission. The form must be completed and signed by or on behalf of all current residents. A copy of the form must be maintained in the active portion of the resident's clinical record.
Figure: 26 TAC §553.267(d)(3)

(4) A resident, or the resident's guardian or legal representative, who wishes to conduct AEM must request AEM by giving a completed, signed, and dated HHSC Request for Authorized Electronic Monitoring form to the manager or designee. A copy of the form must be maintained in the active portion of the resident's clinical record.

(A) If a resident has the capacity to request AEM and has not been judicially declared to lack the required capacity, only the resident may request AEM, notwithstanding the terms of any durable power of attorney or similar instrument.

(B) If a resident has been judicially declared to lack the capacity required to request AEM, only the guardian of the resident may request AEM.

(C) If a resident does not have the capacity to request AEM and has not been judicially declared to lack the required capacity, only the legal representative of the resident may request AEM.

(i) A resident's physician makes the determination regarding the capacity to request AEM. Documentation of the determination must be made in the resident's clinical record.

(ii) When a resident's physician determines the resident lacks the capacity to request AEM, a person from the following list, in order of priority, may act as the resident's legal representative for the limited purpose of requesting AEM:

(I) a person named in the resident's medical power of attorney or other advance directive;

(II) the resident's spouse;

(III) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decision-maker;

(IV) a majority of the resident's reasonably available adult children;

(V) the resident's parents; or

(VI) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.

(5) A resident, or the resident's guardian or legal representative, who wishes to conduct AEM must also obtain the consent of other residents in the room, using the HHSC Consent to Authorized Electronic Monitoring form. When complete, the form must be given to the manager or designee. A copy of the form must be maintained in the active portion of the resident's clinical record. AEM cannot be conducted without the consent of other residents in the room.

(A) Consent to AEM may be given only by:

(i) the other resident or residents in the room;

(ii) the guardian of the other resident, if the resident has been judicially declared to lack the required capacity; or

(iii) the legal representative of the other resident, determined by following the same procedure established under paragraph (4)(C) of this subsection.

(B) Another resident in the room may condition consent on:

(i) pointing the camera away from the consenting resident, when the proposed electronic monitoring is a video surveillance camera; and

(ii) limiting or prohibiting the use of an audio electronic monitoring device.

(C) AEM must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room. The resident's roommate, or the roommate's guardian or legal representative, assumes responsibility for assuring AEM is conducted according to the designated limitations.

(D) If AEM is being conducted in a resident's room, and another resident is moved into the room who has not yet consented to AEM, the monitoring must cease until the new resident, or the resident's guardian or legal representative, consents.

(6) When the completed HHSC Request for Authorized Electronic Monitoring form and the HHSC Consent to Authorized Electronic Monitoring form, if applicable, have been given to the manager or designee, AEM may begin.

(A) Anyone conducting AEM must post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(B) The resident, or the resident's guardian or legal representative, must pay for all costs associated with conducting AEM, including installation in compliance with life safety and electrical codes, maintenance, removal of the equipment, posting and removal of the notice, or repair following removal of the equipment and notice, other than the cost of electricity.

(C) The facility must meet residents' requests to have a video camera obstructed to protect their dignity.

(D) The facility must make reasonable physical accommodation for AEM, which includes providing:

(i) a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(ii) access to power sources for the video surveillance camera or other electronic monitoring device.

(7) All facilities, regardless of whether AEM is being conducted, must post an 8 1/2-inch by 11-inch notice at the main facility entrance. The notice must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of some residents may be monitored electronically by or on behalf of the residents. Monitoring may not be open and obvious in all cases."

(8) A facility may:

(A) require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room, and meets all local and state regulations;

(B) require AEM to be conducted in plain view; and

(C) place a resident in a different room to accommodate a request for AEM.

(9) A facility may not discharge a resident because covert electronic monitoring is being conducted by or on behalf of a resident. If a facility discovers a covert electronic monitoring device and it is no longer covert as defined in §553.3 of this chapter (relating to Definitions), the resident must meet all the requirements for AEM before monitoring is allowed to continue.

(10) All instances of abuse or neglect must be reported to HHSC, as required by §553.273 of this subchapter (relating to Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities). For purposes of the duty to report abuse or neglect, the following apply.

(A) A person who is conducting electronic monitoring on behalf of a resident is considered to have viewed or listened to a recording made by the electronic monitoring device on or before the 14th day after the date the recording is made.

(B) If a resident, who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring, gives a recording made by the electronic monitoring device to a person and directs the person to view or listen to the recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the recording is considered to have viewed or listened to the recording on or before the seventh day after the date the person receives the recording.

(C) A person is required to report abuse based on the person's viewing of or listening to a recording only if the incident of abuse is acquired on the recording. A person is required to report neglect based on the person's viewing of or listening to a recording only if it is clear from viewing or listening to the recording that neglect has occurred.

(D) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant recording made by an electronic monitoring device, the person who possesses the recording must provide the facility with a copy at the facility's expense. The cost of the copy must not exceed the community standard.

If the contents of the recording are transferred from the original technological format, a qualified professional must do the transfer.

(E) A person who sends more than one recording to HHSC must identify each recording on which the person believes an incident of abuse or evidence of neglect may be found. Tapes or recordings should identify the place on the recording that an incident of abuse or evidence of neglect may be found.

§553.275. Emergency Preparedness and Response.

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

(1) Designated emergency contact--A person that a resident, or a resident's legally authorized representative, identifies in writing for the facility to contact in the event of a disaster or emergency.

(2) Disaster or emergency--An impending, emerging, or current situation that:

(A) interferes with normal activities of a facility and its residents;

(B) may:

(i) cause injury or death to a resident or staff member of the facility; or

(ii) cause damage to facility property;

(C) requires the facility to respond immediately to mitigate or avoid the injury, death, damage, or interference; and

(D) except as it relates to an epidemic or pandemic, or to the extent it is incident to another disaster or emergency, does not include a situation that arises from the medical condition of a resident, such as cardiac arrest, obstructed airway, or cerebrovascular accident.

(3) Emergency management coordinator (EMC)--The person who is appointed by the local mayor or county judge to plan, coordinate, and implement public health emergency preparedness planning and response within the local jurisdiction.

(4) Emergency preparedness coordinator (EPC)--The facility staff person with the responsibility and authority to direct, control, and manage the facility's response to a disaster or emergency.

(5) Evacuation summary--A current summary of the facility's emergency preparedness and response plan that includes:

(A) the name, address, and contact information for each receiving facility or pre-arranged evacuation destination identified by the facility under subsection (g)(3)(B) of this section;

(B) the procedure for safely transporting residents and any other individuals evacuating a facility;

(C) the name or title, and contact information, of the facility staff member to contact for evacuation information;

(D) the facility's primary mode of communication to be used during a disaster or emergency and the facility's supplemental or alternate mode of communication;

(E) the facility's procedure for notifying persons referenced in subsection (g)(5) of this section as soon as practicable about facility actions affecting residents during a disaster or emergency, including an impending or actual evacuation, and for maintaining ongoing communication with them for the duration of the disaster, emergency, or evacuation;

(F) a statement about training that is available to a resident, the resident's legally authorized representative, and each designated emergency contact for the resident, on procedures under the facility's plan that involve or impact each of them, respectively; and

(G) the facility's procedures for when a resident evacuates with a person other than a facility staff member.

(6) Plan--A facility's emergency preparedness and response plan.

(7) Receiving facility--A separate licensed assisted living facility:

(A) from which a facility has documented acknowledgement, from an identified authorized representative, as described in subsection (i)(2)(C) of this section; and

(B) to which the facility has arranged in advance of a disaster or emergency to evacuate some or all of a facility's residents, on a temporary basis due to a disaster or emergency, if, at the time of evacuation:

(i) the receiving facility can safely receive and accommodate the residents; and

(ii) the receiving facility has any necessary licensure or emergency authorization required to do so.

(8) Risk assessment--The process of evaluating, documenting, and examining potential disasters or emergencies that pose the highest risk to a facility, and their foreseeable impacts, based on the facility's geographical location, structural conditions, resident needs and characteristics, and other influencing factors, in order to develop an effective emergency preparedness and response plan.

(b) A facility must conduct and document a risk assessment that meets the definition in subsection (a)(8) of this section for potential internal and external emergencies or disasters relevant to the facility's operations and location, and that pose the highest risk to a facility, such as:

(1) a fire or explosion;

(2) a power, telecommunication, or water outage; contamination of a water source; or significant interruption in the normal supply of any essential, such as food or water;

(3) a wildfire;

(4) a hazardous materials accident;

(5) an active or threatened terrorist or shooter, a detonated bomb or bomb threat, or a suspicious object or substance;

(6) a flood or a mudslide;

(7) a hurricane or other severe weather conditions;

(8) an epidemic or pandemic;

(9) a cyber attack; and

(10) a loss of all or a portion of the facility.

(c) A facility must develop and maintain a written emergency preparedness and response plan based on its risk assessment under subsection (b) of this section and that is adequate to protect facility residents and staff in a disaster or emergency.

(1) The plan must address the eight core functions of emergency management, which are:

(A) direction and control;

(B) warning;

(C) communication;

(D) sheltering arrangements;

(E) evacuation;

(F) transportation;

(G) health and medical needs; and

(H) resource management.

(2) The facility must prepare for a disaster or emergency based on its plan and follow each plan procedure and requirement, including contingency procedures, at the time it is called for in the event of a disaster or emergency. In addition to meeting the other requirements of this section, the emergency preparedness plan must:

(A) document the contact information for the EMC for the area, as identified by the office of the local mayor or county judge;

(B) include a process that ensures communication with the EMC, both as a preparedness measure and in anticipation of and during a developing and occurring disaster or emergency; and

(C) include the location of a current list of the facility's resident population, which must be maintained as required under subsection (g)(3) of this section, that identifies:

(i) residents with Alzheimer's disease or related disorders;

(ii) residents who have an evacuation waiver approved under §553.41(f)(2) of this chapter (relating to Decrease in Capacity); and

(iii) residents with mobility limitations or other special needs who may need specialized assistance, either at the facility or in case of evacuation.

(3) A facility must notify the EMC of the facility's emergency preparedness and response plan, take actions to coordinate its planning and emergency response with the EMC, and document communications with the EMC regarding plan coordination.

(d) A facility must:

(1) maintain a current printed copy of the plan in a central location that is accessible to all staff, residents, and residents' legally authorized representatives at all times;

(2) at least annually and after an event described in subparagraphs (A)-(D) of this paragraph, review the plan, its evacuation summary, if any, and the contact lists described in subsection (g)(3) of this section, and update each:

(A) to reflect changes in information, including when an evacuation waiver is approved under §553.41(f)(2) of this chapter;

(B) within 30 days or as soon as practicable following a disaster or emergency if a shortcoming is manifested or identified during the facility's response;

(C) within 30 days after a drill, if, based on the drill, a shortcoming in the plan is identified; and

(D) within 30 days after a change in a facility policy or HHSC rule that would impact the plan;

(3) document reviews and updates conducted under paragraph (2) of this subsection, including the date of each review and dated documentation of changes made to the plan based on a review;

(4) provide residents and the residents' legally authorized representatives with a written copy of the plan or an evacuation summary, as defined in subsection (a)(5) of this section, upon admission, on request, and when the facility makes a significant change to a copy of the plan or evacuation summary it has provided to a resident or a resident's legally authorized representative;

(5) provide the information described in subsection (a)(5)(A) of this section to a resident or legally authorized representative who does not receive an evacuation summary under paragraph (4) of this subsection and requests that information;

(6) notify each resident, next of kin, or legally authorized representative, in writing, how to register for evacuation assistance with the Texas Information and Referral Network (2-1-1 Texas); and

(7) register as a provider with 2-1-1 Texas to assist the state in identifying persons who may need assistance in a disaster or emergency. In doing so, the facility is not required to identify or register individual residents for evacuation assistance.

(e) Core Function One: Direction and Control. A facility's plan must contain a section for direction and control that:

(1) designates the EPC, who is the facility staff person with the responsibility and authority to direct, control, and manage the facility's response to a disaster or emergency;

(2) designates an alternate EPC, who is the facility staff person with the responsibility and authority to act as the EPC if the EPC is unable to serve in that capacity; and

(3) assigns responsibilities to staff members by designated function or position and describes the facility's system for ensuring that each staff member clearly understands the staff member's own role and how to execute it, in the event of a disaster or emergency.

(f) Core Function Two: Warning. A facility's plan must contain a section for warning that:

(1) describes applicable procedures, methods, and responsibility for the facility and for the EMC and other outside organizations, based on facility coordination with them, to notify the EPC or alternate EPC, as applicable, of a disaster or emergency;

(2) identifies who, including during off hours, weekends, and holidays, the EPC or alternate EPC, as applicable, will notify of a disaster or emergency, and the methods and procedures for notification;

(3) describes a procedure for keeping all persons present in the facility informed of the facility's present plan for responding to a potential or current disaster or emergency that is impacting or threatening the area where the facility is located; and

(4) addresses applicable procedures, methods, and responsibility for monitoring local news and weather reports regarding a disaster or potential disaster or emergency, taking into consideration factors such as:

(A) location-specific natural disasters;

(B) whether a disaster is likely to be addressed or forecast in the reports; and

(C) the conditions, natural or otherwise, under which designated staff become responsible for monitoring news and weather reports for a disaster or emergency.

(g) Core Function Three: Communication. A facility's plan must contain a section for communication that:

(1) identifies the facility's primary mode of communication to be used during an emergency and the facility's supplemental or alternate mode of communication, and procedures for communication if telecommunication is affected by a disaster or emergency;

(2) includes instructions on when to call 911;

(3) includes the location of a list of current contact information, where it is easily accessible to staff, for each of the following:

(A) the legally authorized representative and designated emergency contacts for each resident;

(B) each receiving facility and pre-arranged evacuation destination, including alternate pre-arrangements, together with the written acknowledgement for each, as described and required in subsection (i)(2)(C) of this section;

(C) home and community support services agencies and independent health care professionals that deliver health care services to residents in the facility;

(D) personal contact information for facility staff, and

(E) the facility's resident population, which must identify residents who may need specialized assistance at the facility or in case of evacuation, as described in subsection (c)(2)(C) of this section;

(4) provides a method for the facility to communicate information to the public about its status during an emergency; and

(5) describes the facility's procedure for notifying at least the following persons, as applicable and as soon as practicable, about facility actions affecting residents during an emergency, including an impending or actual evacuation, and for maintaining ongoing communication for the duration of the emergency or evacuation:

(A) all facility staff members, including off-duty staff;

(B) each facility resident;

(C) any legally authorized representative of a resident;

(D) each resident's designated emergency contacts;

(E) each home and community support services agency or independent health care professional that delivers health care services to a facility resident;

(F) each receiving facility or evacuation destination to be utilized, if there is an impending or actual evacuation, which, if utilized at the time of evacuation, must be utilized in accordance with the pre-arranged acknowledged procedures described in subsection (i)(2)(C) of this section, where applicable, and must verify with the applicable destination that it is available, ready, and legally authorized at the time to receive the evacuated residents and can safely do so;

(G) the driver of a vehicle transporting residents or staff, medication, records, food, water, equipment, or supplies during an evacuation, and the employer of a driver who is not a facility staff person, and

(H) the EMC.

(h) Core Function Four: Sheltering Arrangements. A facility's plan must contain a section for sheltering arrangements that:

(1) describes the procedure for making and implementing a decision to remain in the facility during a disaster or emergency, that includes:

(A) the arrangements, staff responsibilities, and procedures for accessing and obtaining medication, records, equipment and supplies, water and food, including food to accommodate an individual who has a medical need for a special diet;

(B) facility arrangements and procedures for providing, in areas used by residents during a disaster or emergency, power and ambient temperatures that are safe under the circumstances, but which may not be less than 68 degrees Fahrenheit or more than 82 degrees Fahrenheit; and

(C) if necessary, sheltering facility staff or emergency staff involved in responding to an emergency and, as necessary and appropriate, their family members; and

(2) includes a procedure for notifying HHSC Regulatory Services regional office for the area in which the facility is located and, in accordance with subsection (g)(5)(H) of this section, the EMC, immediately after the EPC or alternate EPC, as applicable, makes a decision to remain in the facility during a disaster or emergency.

(i) Core Function Five: Evacuation.

(1) A facility has the discretion to determine when an evacuation is necessary for the health and safety of residents and staff. However, a facility must evacuate if the county judge of the county in which the facility is located, the mayor of the municipality in which the facility is located mandates it by an evacuation order issued independently or concurrently with the governor.

(2) A facility's plan must contain a section for evacuation that:

(A) identifies evacuation destinations and routes, including at least each pre-arranged evacuation destination and receiving facility described in subparagraph (C) of this paragraph, and includes a map that shows each identified destination and route;

(B) describes the procedure for making and implementing a decision to evacuate some or all residents to one or more receiving facilities or pre-arranged evacuation destinations, with contingency procedures, and a plan for any pets or service animals that reside in the facility;

(C) includes the location of a current documented acknowledgment with an identified authorized representative of at least one receiving facility or pre-arranged evacuation destination, and at least one alternate. The documented acknowledgment must include acknowledgement by the receiving facility or pre-arranged evacuation destination of:

(i) arrangements for the receiving facility or pre-arranged destination to receive an evacuating facility's residents; and

(ii) the process for the facility to notify each applicable receiving facility or pre-arranged destination of the facility's plan to evacuate and to verify with the applicable destination that it is available, ready, and not legally restricted at the time from receiving the evacuated residents, and can do so safely;

(D) includes the procedure and the staff responsible for:

(i) notifying HHSC Regulatory Services regional office for the area in which the facility is located and, in accordance with subsection (g)(5)(H) of this section, the EMC, immediately after the EPC or alternate EPC, as applicable, makes a decision to evacuate, or as soon as feasible thereafter, if it is not safe to do so at the time of decision;

(ii) ensuring that sufficient facility staff with qualifications necessary to meet resident needs accompany evacuating residents to the receiving facility, pre-arranged evacuation destination, or other destination to which the facility evacuates, and remain with the residents, providing any necessary care, for the duration of the residents' stay in the receiving facility or other destination to which the facility evacuates;

(iii) ensuring that residents and facility staff present in the building have been evacuated;

(iv) accounting for and tracking the location of residents, facility staff, and transport vehicles involved in the facility evac-

uation, both during and after the facility evacuation, through the time the residents and facility staff return to the evacuated facility;

(v) accounting for residents absent from the facility at the time of the evacuation and residents who evacuate on their own or with a third party, and notifying them that the facility has been evacuated;

(vi) overseeing the release of resident information to authorized persons in an emergency to promote continuity of a resident's care;

(vii) contacting the EMC to find out if it is safe to return to the geographical area after an evacuation;

(viii) making or obtaining, as appropriate, a comprehensive determination whether and when it is safe to re-enter and occupy the facility after an evacuation;

(ix) returning evacuated residents to the facility and notifying persons listed in subsection (g)(5) of this section who were not involved in the return of the residents; and

(x) notifying the HHSC Regulatory Services regional office for the area in which the facility is located immediately after each instance when some or all residents have returned to the facility after an evacuation.

(j) Core Function Six: Transportation. A facility's plan must contain a section for transportation that:

(1) identifies current arrangements for access to a sufficient number of vehicles to safely evacuate all residents;

(2) identifies facility staff designated during an evacuation to drive a vehicle owned, leased, or rented by the facility; notification procedures to ensure designated staff's availability at the time of an evacuation; and methods for maintaining communication with vehicles, staff, and drivers transporting facility residents or staff during evacuation, in accordance with subsection (g)(5)(A) and (G) of this section;

(3) includes procedures for safely transporting residents, facility staff, and any other individuals evacuating a facility; and

(4) includes procedures for the safe and secure transport of, and staff's timely access to, the following resident items needed during an evacuation: oxygen, medications, records, food, water, equipment, and supplies.

(k) Core Function Seven: Health and Medical Needs. A facility's plan must contain a section for health and medical needs that:

(1) identifies special services that residents use, such as dialysis, oxygen, or hospice services;

(2) identifies procedures to enable each resident, notwithstanding an emergency, to continue to receive from the appropriate provider the services identified under paragraph (1) of this subsection; and

(3) identifies procedures for the facility to notify home and community support services agencies and independent health care professionals that deliver services to residents in the facility of an evacuation in accordance with subsection (g)(5)(E) of this section.

(l) Core Function Eight: Resource Management. A facility's plan must contain a section for resource management that:

(1) identifies a plan for identifying, obtaining, transporting, and storing medications, records, food, water, equipment, and supplies needed for both residents and evacuating staff during an emergency;

(2) identifies facility staff, by position or function, who are assigned to access or obtain the items under paragraph (1) of this subsection and other necessary resources, and to ensure their delivery to the facility, as needed, or their transport in the event of an evacuation;

(3) describes the procedure to ensure medications are secure and maintained at the proper temperature throughout an emergency; and

(4) describes procedures and safeguards to protect the confidentiality, security, and integrity of resident records throughout an emergency and any evacuation of residents.

(m) Receiving Facility. To act as a receiving facility, as defined in paragraph (a)(7) of this section, a facility's plan must include procedures for accommodating a temporary emergency placement of one or more residents from another assisted living facility, only in an emergency and only if:

(1) the facility does not exceed its licensed capacity, unless pre-approved in writing by HHSC, and the excess is not more than 10 percent of the facility's licensed capacity;

(2) the facility ensures that the temporary emergency placement of one or more residents evacuated from another assisted living facility does not compromise the health or safety of any evacuated or facility resident, facility staff, or any other individual;

(3) the facility is able to meet the needs of all evacuated residents and any other persons it receives on a temporary emergency basis, in accordance with §553.18(h) of this chapter, while continuing to meet the needs of its own residents, and of any of its own staff or other individuals it is sheltering at the facility during an emergency, in accordance with its plan under subsection (h) of this section;

(4) the facility maintains a log of each additional individual being housed in the facility that includes the individual's name, address, and the date of arrival and departure.

(5) the receiving facility ensures that each temporarily placed resident has at arrival, or as soon after arrival as practicable and no later than necessary to protect the health of the resident, each of the following necessary to the resident's continuity of care:

(A) necessary physician orders for care;

(B) medications;

(C) a service plan;

(D) existing advance directives; and

(E) contact information for each legally authorized representative and designated emergency contact of an evacuated resident, and a record of any notifications that have already occurred.

(n) Emergency preparedness and response plan training. The facility must:

(1) provide staff training on the emergency preparedness plan at least annually;

(2) train a facility staff member on the staff member's responsibilities under the plan:

(A) prior to the staff member assuming job responsibilities; and

(B) when a staff member's responsibilities under the plan change;

(3) conduct at least one unannounced annual drill with facility staff for severe weather or another emergency identified by the

facility as likely to occur, based on the results of the risk assessment required by subsection (b) of this section;

(4) offer training, and document, for each, the provision or refusal of such training, to each resident, legally authorized representative, if any, and each designated emergency contact, on procedures under the facility's plan that involve or impact each of them, respectively; and

(5) document the facility's compliance with each paragraph of this subsection at the time it is completed.

(o) Self-reported incidents related to a disaster or emergency.

(1) A facility must report a fire to HHSC as follows:

(A) by calling 1-800-458-9858 immediately after the fire or as soon as practicable during the course of an extended fire; and

(B) by submitting a completed HHSC form titled "Fire Report for Long Term Care Facilities" within 15 calendar days after the fire.

(2) A facility must report to HHSC a death or serious injury of a resident, or threat to resident health or safety, resulting from an emergency or disaster as follows:

(A) by calling 1-800-458-9858 immediately after the incident, or, if the incident is of extended duration, as soon as practicable after the injury, death, or threat to the resident; and

(B) by conducting an investigation of the emergency and resulting resident injury, death, or threat, and submitting a completed HHSC Form 3613-A titled "SNF, NF, ICF/IID, ALF, DAHS and PPECC Provider Investigation Report with Cover Sheet." The facility must submit the completed form within five working days after making the telephone report required by paragraph (2)(A) of this subsection.

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 July 29, 2021.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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Proposal publication date: January 29, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER F. ADDITIONAL LICENSING STANDARDS FOR CERTIFIED ALZHEIMER'S ASSISTED LIVING FACILITIES

26 TAC §§553.301, 553.303, 553.305, 553.307, 553.309, 553.311

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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 July 29, 2021.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: August 31, 2021
Proposal publication date: January 29, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER G. INSPECTIONS, INVESTIGATIONS, AND INFORMAL DISPUTE RESOLUTION

26 TAC §§553.327, 553.329, 553.331, 553.333, 553.335, 553.337

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

§553.335. Confidentiality and Release of Information.

(a) Confidentiality. All reports, records, and working papers used or developed by HHSC in an investigation are confidential and may be released only as provided in this subsection.

(1) Completed written investigation reports on cases concluded to be abuse or neglect must be furnished to the district attorney and appropriate law enforcement agency. HHSC also may release these reports to any other public agency HHSC deems appropriate to the investigation.

(2) Completed written investigation reports are open to the public, provided the report is deidentified. The process of deidentification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to HHSC as part of the investigation.

(3) HHSC notifies the reporter and the facility of the results of the HHSC investigation of a reported case of abuse or neglect, whether HHSC concludes that abuse or neglect occurred or did not occur.

(b) Immunity. A person who reports suspected instances of abuse or neglect, in the absence of bad faith or malicious conduct, is immune from civil or criminal liability which might have otherwise resulted from making the report. Such immunity extends to participation in any judicial proceeding resulting from the report.

(c) Privileged communications. In a proceeding regarding a report or investigation conducted under this subchapter, evidence must not be excluded on a claim of privileged communication except in the case of a communication between an attorney and a client.

(d) Central registry. HHSC maintains a central registry of reported cases of abuse and neglect at the central office in Austin.

(e) Releasing Public Records.

(1) As further described in this section, Texas Government Code, Chapter 552, governs procedures for inspection of public records.

(2) Long-term Care Regulation, Regulatory Services Division is responsible for the maintenance and release of records on licensed facilities, and other related records.

(3) The application for inspection of public records is subject to the following criteria.

(A) The application must be made to Long-term Care Regulation, Regulatory Services Division, P.O. Box 149030 (E-349), Austin, Texas 78714-9030.

(B) The requestor must identify himself or herself.

(C) The requestor must give reasonable prior notice of the time for inspection and copying of records.

(D) The requestor must specify the records requested.

(E) On written applications, if HHSC is unable to ascertain the records being requested, HHSC may return the written application to the requestor for further specificity.

(F) HHSC provides the requested records as soon as possible. However, if the records are in active use, or in storage, or time is needed for proper deidentification or preparation of the records for inspection, HHSC so advises the requestor and sets an hour and date within a reasonable time for records to be available.

(4) Original records may be inspected or copied, but in no instance will original records be removed from HHSC offices.

(5) Records maintained by HHSC are open to the public, except to the extent a record is made confidential by law or otherwise exempted from disclosure under Texas Government Code, Chapter 552. Without limitation:

(A) incomplete reports, audits, evaluations, and investigations made of, for, or by HHSC are confidential;

(B) reports of abuse and neglect are confidential;

(C) all names and related personal, medical, or other identifying information about a resident are confidential;

(D) information about any identifiable person that is defamatory, or an invasion of privacy is confidential;

(E) information identifying complainants or informants is confidential;

(F) itineraries of surveys and inspections are confidential; and

(G) to implement this subsection, HHSC may not alter or deidentify original records. Instead, HHSC makes available for public review or release only a properly deidentified copy of the original record.

(6) Charging for copies of records must be in accordance with the following criteria.

(A) To inspect records without requesting copies, the requestor must specify the records to be inspected and HHSC does not charge for this service, except where HHSC determines that a charge is appropriate based on the nature of the request.

(B) If the requestor wants to request copies of a record, the requestor will specify in writing the records to be copied, and HHSC notifies the requestor of the cost of the records, which the requestor must pay in advance. Checks and other instruments of payment must be made payable to the Texas Health and Human Services Commission.

(C) Any expenses for standard-size copies incurred in the reproduction, preparation, or retrieval of records must be borne by the requestor on a cost basis in accordance with costs established by the Office of the Attorney General in 1 TAC Chapter 70 (relating to Costs of Copies of Public Information) or, where permitted by those rules, by HHSC for office machine copies.

(D) For documents that are mailed, HHSC charges for the postage at the time it charges for the reproduction and adds applicable sales taxes to the cost of copying records.

(7) HHSC makes a reasonable effort to furnish records promptly and will extend to the requestor all reasonable comfort and facility for the full exercise of the rights granted by Texas Government Code, Chapter 552.

§553.337. Retaliation.

An HHSC employee must not retaliate against an assisted living facility, an employee of an assisted living facility, or a person in control of an assisted living facility for:

(1) complaining about the conduct of an HHSC employee;

(2) disagreeing with an HHSC employee about the existence of a violation of this chapter or a rule adopted under this chapter; or

(3) asserting a right under state or federal law.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
Chief Counsel
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SUBCHAPTER H. ENFORCEMENT
DIVISION 1. GENERAL INFORMATION

26 TAC §553.351, §553.353

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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DIVISION 2. ACTIONS AGAINST A LICENSE: SUSPENSION

26 TAC §§553.401, 553.403, 553.405, 553.407, 553.409, 553.411, 553.413, 553.415, 553.417, 553.419, 553.421, 553.423, 553.425, 553.427, 553.429, 553.431, 553.433, 553.435, 553.437, 553.439

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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. ACTIONS AGAINST A LICENSE: REVOCATION

26 TAC §§553.451, 553.453, 553.455, 553.457, 553.459, 553.461, 553.463, 553.465, 553.467, 553.469, 553.471, 553.473, 553.475, 553.477, 553.479, 553.481, 553.483

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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DIVISION 4. ACTIONS AGAINST A LICENSE: TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS

26 TAC §553.501, §553.503

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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DIVISION 5. ACTIONS AGAINST A LICENSE: EMERGENCY LICENSE SUSPENSION AND CLOSING ORDER

26 TAC §§553.551, 553.553, 553.555, 553.557, 553.559, 553.561, 553.563, 553.565, 553.567, 553.569, 553.571, 553.573, 553.575, 553.577, 553.579, 553.581, 553.583, 553.585, 553.587, 553.589, 553.591, 553.593, 553.595, 553.597

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

§553.589. What records, reports, and supplies are sent to the receiving facility for transferred residents?

The following reports, records, and supplies must be sent to the receiving institution for each transferred resident:

(1) a copy of the current physician's orders for:

(A) medication;

(B) treatment;

(C) diet; and

(D) special services required;

(2) personal information, such as name and address of next of kin, guardian, or responsible party;

(3) attending physician;

(4) Medicare and Medicaid identification number, if applicable;

(5) social security number;

(6) other identification information as deemed necessary and available;

(7) a copy of the resident's current comprehensive assessment and service plan;

(8) all medications dispensed in the resident's name that have current physician's orders. Medications must be inventoried and transferred with the resident. Medications past expiration date or discontinued by physician order must be inventoried for disposition in accordance with state law. Only current prescription medications taken on a regular or as-needed basis may be transferred with the resident;

(9) the resident's personal belongings, clothing, and toilet articles. The closing facility must make an inventory of personal property and valuables; and

(10) resident trust fund accounts maintained by the closing facility. All items must be properly inventoried, and receipts obtained for audit purposes by the appropriate state agency.

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DIVISION 6. ACTIONS AGAINST A LICENSE: CIVIL PENALTIES

26 TAC §553.601, §553.603

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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DIVISION 7. TRUSTEES: INVOLUNTARY APPOINTMENT OF A TRUSTEE

26 TAC §§553.651, 553.653, 553.655, 553.657, 553.659, 553.661

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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DIVISION 8. TRUSTEES: APPOINTMENT OF A TRUSTEE BY AGREEMENT

26 TAC §§553.701, 553.703, 553,705, 553.707, 553.709, 553.711

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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DIVISION 9. ADMINISTRATIVE PENALTIES

26 TAC §553.751

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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DIVISION 10. ARBITRATION

26 TAC §553.801

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, and Texas Health and Safety Code §§247.002(1)(E); 247.025(b), and 247.0211.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 25, 2021, adopted amendments to 31 TAC §§57.973, 57.981, and 57.992, concerning the Statewide Recreational and Commercial Fishing Proclamation, without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1215). The rules will not be republished.

The amendment to 57.973, concerning Devices, Means, and Methods allows the use of crab traps (for recreational purposes only) in certain waters in Aransas County where such use is currently prohibited. Within the described area, crab traps will be lawful only if securely tethered to a dock, pier, or bulkhead, and not placed in open water. In 1965, the area described in the provisions of §57.973(g)(3)(J) was designated a "net-free zone" in which it became unlawful to set or drag any kind of net or seine except a minnow seine not exceeding 20 feet in length for taking bait. In addition, crab traps and trotlines were also prohibited in the "net-free zone." Though the intent of the provision is not entirely clear today, it was likely intended to reduce or prevent user conflict between waterfront homeowners and commercial fishermen. Netting of fish has since been banned outright in the coastal waters of Texas, making the "net-free zone" superfluous; however, the specific prohibition of crab traps and trotlines has remained as an artifact. The department has determined that allowing some recreational opportunity for crabbing will have no negative impact on crabs or other resources in Aransas Bay. Therefore, the amendment allows up to three crab traps to be fished simultaneously for recreational purposes in the area described, provided the crab traps are secured to some sort of fixed object, such as a pier, dock, or bulkhead.

In 2019, the department altered gear tag requirements for jug lines, minnow traps, perch traps, throwlines, and trotlines to facilitate the removal of abandoned fishing gear from public waters, stipulating that each type of gear must have the required floats and tags attached in order to be valid as lawful gear. The amendment to §57.973 alters those provisions to standardize language used to establish the required dimensions for floats and buoys, removing the word "diameter" and replacing it the word "width" in subsection (g)(9), (21), and (22) and replacing the word "height" with the word "length" in subsection (g)(11) and (12). The amendment also corrects an inadvertent error in the specified buoy dimensions for minnow traps in subsection (g)(11), which should be three inches in width, not six inches in width.

The amendment to §57.981, concerning Bag, Possession, and Length Limits, consists of several actions.

As a result of an extensive review of existing harvest regulations for blue and channel catfish, the department determined that modifications to the current harvest strategy could be beneficial. The current harvest management strategy for blue and channel catfish consists of standard statewide bag and length limits that apply by default on all water bodies for which the rules do not provide a specific exception. The current statewide stan-

dard is a 12-inch minimum length limit and 25-fish daily bag limit (blue and channel catfish combined). Additionally, there are currently 11 categories of regulatory exceptions to the statewide standard, consisting of various combinations of daily bag limit, minimum length limit, and limitations on the number of fish in certain length classes that may be retained per day. The exceptions to the statewide standards are predicated on a combination of factors, including but not limited to the size of the reservoir, the characteristics of the catfish population in the reservoir, habitat quality, and the intensity and frequency of angling pressure.

The amendment to §57.981(c)(5)(C) implements a new statewide standard harvest regulation, eliminates two categories of exceptions to the statewide standard, modifies one exception to the statewide standard, and implements those categories of exceptions on affected reservoirs and stream segments as noted.

The new statewide standard harvest regulation is a 25-fish daily bag limit, no minimum length limit, and a requirement that no more than 10 fish of 20 inches or larger may be retained per day. As a statewide standard harvest regulation, this provision affects reservoirs and rivers where the department has determined that blue and/or channel catfish populations are thriving and where more restrictive regulations are not biologically appropriate. The effects of the removal of the minimum length limit are expected to be minimal, as most anglers prefer to harvest larger-sized fish. The retention restriction has the potential to increase numbers of larger-sized fish in some reservoirs.

The current exception to the statewide standard harvest regulation in effect on Lake Tawakoni (Hunt, Rains, and Van Zandt counties) consists of a 25-fish daily bag limit, no minimum length limit, and a daily retention limit of not more seven fish 20 inches or longer and not more than two fish 30 inches or longer. The amendment modifies this exception to provide for a daily retention limit of not more than five fish of 20 inches or longer and not more than one fish of 30 inches or longer. The reservoirs and stream segments where this exception will be implemented are those where the population structure is believed to be capable of producing bigger fish in large numbers. The regulation is intended to direct harvest towards smaller, more abundant fish while protecting fish 20 inches in length and longer, which is expected to result in an increase in the abundance of fish 20 inches and longer, and especially, the abundance of fish 30 inches and larger. The department believes that the proposed modification would affect angling for blue catfish more than angling for channel catfish, as most of the larger fish in these populations are blue catfish.

The current exception to the statewide standard harvest regulation in effect on Lakes Lewisville (Denton County), Richland-Chambers (Freestone and Navarro counties), and Waco (McLennan County) consists of a 25-fish daily bag limit and a prohibition on the retention of fish between 30 and 45 inches in length. The amendment eliminates this category of exception and the reservoirs where it is currently in effect will instead be regulated under the new standard being implemented on Lake Tawakoni (discussed above).

The current exception to the statewide standard harvest regulation in effect on Lakes Kirby (Taylor County) and Palestine (Cherokee, Anderson, Henderson, and Smith counties) consists of a daily bag and possession limit of 50 fish, no minimum length limit, and a retention limit of five fish 20 inches or longer per day. The amendment eliminates this category of exception and the reservoirs where it is in effect will instead be regulated under the new standard being implemented on Lake Tawakoni (discussed above).

On Lakes Belton (Bell and Coryell counties), Bob Sandlin (Camp, Franklin, and Titus counties), Conroe (Montgomery and Walker counties), Hubbard Creek (Stephens County), Lavon (Collin County), and Ray Hubbard (Collin, Dallas, Kaufman, and Rockwall counties) the current statewide standard harvest regulation is in effect. The amendment implements the new standard being implemented on Lake Tawakoni (discussed above) on these reservoirs as well.

On Lake Livingston (Polk, San Jacinto, Trinity, and Walker counties), the current regulatory exception to the statewide standard is a 12-inch minimum length limit and 50-fish daily bag limit (combined). The amendment replaces it with a 50-fish daily bag limit and no minimum length limit, with the additional provision that no more than five fish of 30 inches or longer may be retained per day. The amendment also would apply on Lake Sam Rayburn (Jasper County), which is under the current statewide standard regulation. On these reservoirs, blue catfish populations are abundant, recruitment is stable, growth is optimal, and exploitation is low. The department believes that removing the minimum length limit, in conjunction with the retention limit on larger fish, will not result in negative population impacts and will distribute the harvest of larger fish to more anglers.

The amendment also implements a new exception to the statewide standard on Lakes Braunig (Bexar County), Calaveras (Bexar County), Choke Canyon (Live Oak and McMullen counties), Fayette County (Fayette County), and Proctor (Comanche County), consisting of a 14-inch minimum length limit and a 15-fish daily bag limit (combined). Department investigations indicate that the affected reservoirs and river segments are experiencing comparatively limited spawning and recruitment and that excessive harvest is a possible problem. In these populations, reducing harvest and directing harvest to larger-sized individuals would benefit the catfish population structure. The department believes that few anglers would be affected by the reduced bag limit, but the proposed minimum length limit might impact some anglers.

The amendment to §57.981 also alters provisions governing the recreational harvest of red snapper in federal waters (otherwise known as the Exclusive Economic Zone, or EEZ). Federal rulemaking based on the Gulf of Mexico Fishery Management Plan for Reef Fish Amendment 50 (A-F) created state-based management programs for recreational angling in each state. Each state is authorized to establish seasons, and bag and size limits for red snapper harvested from federal and state waters. Texas state waters are open year around for recreational red snapper fishing; however, by federal action the federal waters are closed until June 1 of each year, and the bag limit is two fish with a 16-inch minimum length limit. The amendment clarifies that red snapper caught in the EEZ during the period of time when federal waters are open for the recreational take of red snapper count as part of the bag limit established for the take of red snapper in Texas state waters.

The amendment to §57.992, concerning Bag, Possession, and Length Limits, alters regulations governing the commercial take of blue and channel catfish, which is also a result of the department review of catfish management strategies referred to earlier in this preamble. The current rule establishes a statewide standard bag limit of 25 fish (both species combined) with a 14-inch minimum length limit. The amendment provides for three exceptions to the statewide standard harvest regulation. On

Lakes Caddo (Harrison and Marion counties), Livingston (Polk, San Jacinto, Trinity, and Walker counties), Sam Rayburn (Jasper County), and Toledo Bend (Newton Sabine, and Shelby counties), and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge, the amendment implements a daily bag limit of 50 fish with a retention limit of not more than five fish 30 inches or longer. The bag limit is already 50 fish per day on all of the reservoirs except Lake Sam Rayburn, but all of the affected reservoirs are very large, exhibit high recruitment, and can sustain high levels of harvest with very low risk. Additionally, all the reservoirs and stream segments other than Lakes Livingston and Sam Rayburn are contiguous with Louisiana waters and the bag limits will be similar, thus reducing confusion with respect to compliance and enforcement.

The amendment also establishes a commercial bag limit of five fish with no length or retention restrictions on lakes lying totally within a state park and community fishing lakes. These are typically small impoundments of 75 acres or less; thus there is little concern for negative population impacts.

Finally, the amendment establishes a daily bag limit of 25 fish in counties where the sale and purchase of catfish taken from public fresh water is allowed by statute under the provisions of Parks and Wildlife Code, §66.111. The department has determined that a standard of 25 fish per day per commercial license holder appropriately balances the interests of commercial and recreational anglers and will not result in depletion or waste of the resource.

The department received seven comments opposing adoption of the portion of the proposed amendment to §57.973 regarding crab traps in Aransas County. Six commenters provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the rule will cause overcrowding and user conflict on piers and docks. The department disagrees with the comment and responds that all license purchasers have an equal right to pursue aquatic resources by use of lawful means and that it is in any case difficult to envision a scenario in which user conflicts between recreational anglers and recreational crabbers, since crab traps do not have to be continuously attended. No changes were made as a result of the comment.

One commenter opposed adoption and stated that families depend on crab catches. The department neither agrees nor disagrees with the comment and responds that the rule does not prohibit families from catching crabs. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule should allow crab traps to be affixed to stakes or poles within walking distance of the shore. The department disagrees with the comment and responds that abandoned crab traps are a significant danger to crab resources; by requiring crab traps in this area to be affixed to permanent stationary objects, the possibility of lost, dislodged, or abandoned crab traps is greatly reduced. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should be the same as those for crabbing elsewhere. The department disagrees with the comment and responds that because of high harvest pressure and the problematic nature of crab trap abandonment it is necessary to restrict the number of crab traps that may be fished and require those traps to be affixed to permanent stationary structures. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will result in more abandoned crab traps. The department disagrees with the comment and responds that limiting the number of traps to three per person and requiring traps to be affixed to permanent stationary objects are expected to result in minimal trap abandonment issues. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule should implement a limit of one crab trap per person. The department disagrees with the comment and responds that the limit of three traps per person will not result in negative impacts to crab populations or crab trap abandonment issues. No changes were made as a result of the comment.

The department received 50 comments supporting adoption of the proposed amendment. The department received numerous comments regarding proposed changes to blue and channel catfish harvest regulations. The department notes that due to the nature of the structure of the public comment opportunity on the department's website, many commenters provided the same comment repeatedly, not realizing that the proposed amendments consisted of one change to the statewide harvest regulation accompanied by various exceptions to that standard for implementation on specific reservoirs. Thus, some commenters repeated the same comment regarding the proposed new statewide standard in multiple places, which depending on the response could be interpreted as comments regarding rule changes for individual reservoirs. The department has filtered the public comment to remove those comments that were clearly and obviously duplicate comments and intended to express opposition to the proposed new statewide standard. For those comments entered in response to harvest exceptions on specific reservoirs but not clearly meant to address the proposed new statewide standard, the department has treated the comment as specific to the reservoir.

The department received 77 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented a new statewide standard harvest regulation for blue and channel catfish. Of those comments, 34 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the department favors the interests of trophy anglers at the expense of anglers seeking food and that regulations should be predicated on population health instead of special interests. The department disagrees with the comment and responds that no user group receives preferential treatment in the formulation of harvest regulations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department favors the interests of guides. The department disagrees with the comment and responds that harvest regulations are developed and implemented without favor towards any user group. No changes were made as a result of the comment.

One commenter opposed adoption and stated that harvest regulations are leading to declines in flathead catfish populations and making it more difficult for persons who use trotlines to retain enough fish to eat. The department disagrees with the comment because it is not germane to the subject of the rulemaking, which is harvest regulations for channel and blue catfish, and responds that the department is satisfied with the efficacy of current har-

vest rules governing flathead catfish. No changes were made as a result of the comment.

The department received eight comments opposing adoption and stating preference for various combinations of length, possession, and retention limits. One commenter opposed adoption and stated that there should be a 10-fish limit, with only one fish over 30 inches in length; one commenter stated that the daily bag limit should be 15 fish with a retention limit of no more than five catfish over 20 inches in length; one commenter stated that all water bodies in the state should have a 12-inch minimum length limit and a retention limit of one fish over 30 inches in length; one commenter stated that the daily bag limit should be 15 fish with a retention limit of five catfish over 20 inches in length; one commenter opposed adoption and stated that the daily bag limit should be 15 fish with a retention limit of no more than five fish over 20 inches in length and no more than one fish over 30 inches in length; one commenter stated that the minimum length limit should be 12 inches with no fish between 20 and 34 inches in length allowed to be retained; one commenter stated that there should be no minimum length limit with a retention limit of one fish over 30 inches in length (in order to reduce the need for anglers to make multiple measurements); and one commenter stated that the retention limit should be no more than two fish over 34 inches in length because bigger fish reproduce. Similarly, the department received 28 comments opposing adoption and stating a singular preference for special daily retention limits. Four commenters stated that the retention limit should be no more than 10 fish larger than 20 inches in length; six commenters stated that the retention limit should be one fish larger than 30 inches in length; one commenter stated that it should be unlawful to retain any fish over 45 inches in length; and one commenter stated that there is no need for anyone to keep five fish over 20 inches in length because one fish of that size provides a meal for a family; and one commenter stated that there should be a statewide daily retention limit of not more one fish of greater than 30 inches in length. Additionally, the department received six comments opposing adoption and stating a singular preference for minimum length limits. Four commenters stated that the minimum length limit should be 14 inches; four commenters stated that minimum length limit should be 12 inches (to allow small fish to grow); one commenter stated that minimum length should be larger than 12 inches (because there is nothing to eat on a 12-inch fish); and one commenter stated that the minimum length should be at least 6 inches. The department disagrees with the comments and responds that the rule as adopted is the result of an extensive review of blue and channel catfish harvest regulations, population and angler data, and angler perceptions and represents a balance of management goals and angler preferences. As a statewide standard harvest regulation, the provision is implemented on reservoirs and rivers where the department has determined that blue and/or channel catfish populations are thriving and more restrictive regulations are either unnecessary or not biologically appropriate. The effects of the removal of the minimum length limit are expected to be minimal, as most anglers prefer to harvest larger-sized fish, while the special daily retention restriction has the potential to increase numbers of larger-sized fish on the waterbodies where it is being implemented. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the current 25-fish possession limit is excessive. The department disagrees with the comment and responds that after an extensive review of biological data across the state, the department has determined that throughout most of the state (i.e., those waterbodies where the statewide harvest standard is implemented) blue and/or channel catfish populations are thriving or stable and more restrictive possession limits are therefore not biologically appropriate. The statewide standard harvest regulation of 25 fish per day will not negatively impact populations or population structures. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the maximum number of hooks allowed for jug lines and trot lines should be reduced to 20 and the department should require juglines and trotlines to be checked every 12 hours. The department disagrees with the comment because it is not germane to the subject of the rulemaking.

One commenter opposed adoption and stated that the number of juglines that any person may fish at one time should be lowered. The department disagrees with the comment because it is not germane to the subject of the rulemaking.

One commenter opposed adoption and stated that limitations should be put on how many jug/throw lines can be put out by an individual. The department disagrees with the comment because it is not germane to the subject of the rulemaking.

One commenter opposed adoption and stated that if department surveys "have determined it is not an issue" then there is no reason to change it. The department neither disagrees nor agrees with the comment and responds that the point of the comment cannot be determined. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will cause people to keep smaller fish. The department disagrees with the comment and responds that the daily bag and possession limits function to govern the overall impacts of angling pressure on fish populations and that the choice to retain smaller fish as opposed to larger fish will not exert deleterious effects on those populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that without size or length limits catfish will be "hunted down." The department disagrees with the comment and responds that the rules as adopted impose a statewide harvest regulation stipulating both the number and size limits on blue and channel catfish and that there is no potential for excessive harvest impacts as a result of those rules where they are imposed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should allow tournament anglers to temporarily possess up to five fish to be returned to the lake alive after being weighed. The department disagrees with the comment and responds that the rules as adopted allow the possession of up to 10 fish of greater than 20 inches in length, which the department believes is, in concert with the absence of a maximum length limit, more than sufficient to allow for any scenario involving temporary possession of live fish for purposes of weighing. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should not be a maximum length limit because "the big fish are not the fish doing the majority of the reproducing." The department agrees with the comment and responds that the statewide harvest regulation does not stipulate a maximum length limit. No changes were made as a result of the comment.

One commenter opposed adoption and stated going fishing three times per year does not affect fishing. The department agrees that one person who goes fishing three times per year probably exerts no detectable impacts on fish populations; however, there are millions of anglers in Texas, not one; thus, the behavior of individual anglers can result in tremendous impacts to fish populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department "Need to focus on the drugs and trash being throw in water then fish will be even better." The department disagrees that there is any connection between drug use and the quality of the fishery, or that litter is in and of itself a fisheries management issue. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if she is limited to smaller fish she will not be able to provide fish to others in need. The department, while sympathetic to those in need, disagrees with the comment and responds that recreational angling as a primary food source for communities is not ecologically sustainable. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department's emphasis on trophies will make fishing not worth bothering to do. The department disagrees with the comment and responds that the department does not emphasize trophy fishing but does recognize that anglers find larger fish more desirable for a variety of reasons, including as trophies. No changes were made as a result of the comment.

One commenter opposed adoption and stated that modern technology is enabling anglers to catch large fish in large numbers, which will deplete populations unless harvest regulations protect larger fish. The department disagrees with the comment and responds that the method of take is irrelevant with respect to population impacts, as the bag and possession limits are designed to act as a mechanism to prevent population declines as a result of harvest. No changes were made as a result of the comment.

One commenter opposed adoption and stated that allowing people to keep fish under 12 inches will "deplete the younger fish population quickly." The department disagrees with the comment and responds that the absence of minimum length limits will not deplete the population at all, as most if not all anglers do not find fish under 12 inches desirable to retain. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is too much regulatory variability from lake to lake so there should be a single harvest regulation for people who like things simple. The department disagrees with the comment and responds that the high variability of environmental and sociological indices across a geographical area as large and varied as Texas makes a single harvest regulation for the entire state not only impractical but unwise. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be one regulation that applies on every waterbody in the state. The department disagrees with the comment and responds that the high variability of environmental and sociological indices across a geographical area as large and varied as Texas makes a single harvest regulation for the entire state not only impractical but unwise. No changes were made as a result of the comment.

The department received 93 comments supporting adoption of the proposed provision.

The department received 47 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Lake Belton. Of those comments, 22 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Ten commenters opposed adoption and stated a preference for particular bag, possession, and special daily retention limits, as follows. One commenter stated that there should be a minimum length limit of 12 inches and a retention limit of one fish of over 30 inches in length; three commenters stated that there should be a retention limit of one fish over 30 inches in length; one commenter stated that there should be a minimum length limit of 12 inches and no retention limits; one commenter stated that there should be a minimum length limit of 14 inches; one commenter stated that there should be a bag limit of 15 fish with no more than five over 20 inches in length; one commenter stated that the limit should be 15 fish of any size, with no more than five fish over 20 inches and one fish over 30 inches; one commenter stated that one fish over 35 inches in length should be the retention limit; and one commenter stated that no fish over 30 inches in length should be allowed to be retained with an exception for temporary possession for tournament weigh-ins. The department disagrees with the comments and responds that the rule as adopted is the result of an extensive review of blue and channel catfish harvest regulations, population and angler data, and angler perceptions and represents a balance of management goals and angler preferences. As an exception to the statewide standard harvest regulation, this provision is being implemented on reservoirs and stream segments where the population structure is believed to be capable of producing bigger fish in large numbers. The regulation is intended to direct harvest towards smaller, more abundant fish while protecting fish 20 inches in length and longer, which is expected to result in an increase in the abundance of fish 20 inches and longer, and especially, the abundance of fish 30 inches and larger. The department believes that the proposed modification will affect angling for blue catfish more than angling for channel catfish, as most of the larger fish in these populations are blue catfish. The effects of the removal of the minimum length limit are expected to be minimal, as most anglers prefer to harvest larger-sized fish. No changes were made as a result of the comments.

One commenter opposed adoption and stated that that allowing ten fish longer than 30 inches to be retained will cause people to exceed bag limits. The department disagrees with the comment and responds that regulations do not function as inducements and that persons who make the decision to exceed a bag limit are committing an unlawful act. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the Lake Belton fishery needs "more restrictive guidelines." The department disagrees with the comment and responds that the harvest rules being put in place on Lake Belton are biologically appropriate for that reservoir. No changes were made a result of the comment.

One commenter opposed adoption and stated that persons using juglines and trotlines are killing the fishing quality and causing damage to equipment. The department disagrees with the comment because it is not germane to the subject of the rulemaking but responds that there is no biological evidence to suggest that lawful use of juglines or trotlines is resulting in negative consequences for fish populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that juglines and trotlines should either be prohibited or there should be a limit of 15 juglines per boat and one trotline with not more than 25 hooks per boat. The department disagrees with the comment because it is not germane to the rulemaking and responds that there is no biological reason to either ban the use of juglines or trotlines on Lake Belton or to impose additional restrictions on those gears. No changes were made as a result of the comment.

One commenter opposed adoption and stated that adding that the department seems to be biased against those who angle for food. The department disagrees with the comment and responds that the formulation of harvest regulations is first and foremost guided by the biological dictates of a given waterbody; and allowing anglers to keep up to 25 catfish would be considered a reasonable amount for purposes of consumption. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the special daily retention limit should be five fish over 20 inches in length and one fish over 30 inches in length because too many size and possession limits is "too difficult for the average fisherman." The department agrees with the comment to the extent that the rule proposal stipulated a special daily retention limit on Lake Belton of no more than five fish over 20 inches in length and no more than one fish over 30 inches in length, which was adopted. The department disagree that the rules are too difficult to understand. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that there should be a minimum length limit. The department disagrees with the comment and responds that a minimum length limit on Lake Belton will not result in tangible benefits for blue and channel catfish populations, as the majority of, if not all, anglers prefer to retain larger fish rather than smaller fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be "no minimum length for keepers." The department is puzzled by the comment. The possession limit is the number of fish that an angler may lawfully possess (i.e., "keepers"). Therefore, the removal of the minimum length limit on Lake Belton means that any lawfully harvested blue or channel catfish can be kept, provided the daily bag limit is not exceeded. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

The department received 75 comments supporting adoption of the proposed provision.

The department received 32 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Lake Bob Sandlin. Of those comments, nine articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Three commenters opposed adoption and stated a preference for particular bag, possession, and/or special daily retention limits, as follows. One commenter stated that there should be a bag limit of 15 fish with no more than five over 20 inches in length; one commenter stated that no fish over 30 inches in length should be allowed to be retained with an exception for temporary possession for tournament weigh-ins; one commenter stated that there should be a minimum length limit of 12 inches; one commenter stated that there should be a minimum length limit of at least 14 inches. The department disagrees with the comments and responds that the rule as adopted is the result of an extensive review of blue and channel catfish harvest regulations, population and angler data, and angler perceptions and represents a balance of management goals and angler preferences. As an exception to the statewide standard harvest regulation, this provision is being implemented on reservoirs and stream segments where the population structure is believed to be capable of producing bigger fish in large numbers. The regulation is intended to direct harvest towards smaller, more abundant fish while protecting fish 20 inches in length and longer, which is expected to result in an increase in the abundance of fish 20 inches and longer, and especially, the abundance of fish 30 inches and larger. The department believes that the proposed modification will affect angling for blue catfish more than angling for channel catfish, as most of the larger fish in these populations are blue catfish. The effects of the removal of the minimum length limit are expected to be minimal, as most anglers prefer to harvest larger-sized fish. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be a minimum length limit. The department disagrees with the comment and responds that a minimum length limit on Lake Bob Sandlin will not result in tangible benefits to blue and channel catfish populations, as the majority of, if not all, anglers prefer to retain larger fish rather than smaller fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be "no minimum length for keepers." The department is puzzled by the comment. The possession limit is the number of fish that an angler may lawfully possess (i.e., "keepers"). Therefore, the removal of the minimum length limit on Lake Bob Sandlin means that any lawfully harvested blue or channel catfish can be kept, provided the daily bag limit is not exceeded. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

The department received 71 comments supporting adoption of the proposed provision.

The department received 42 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Lake Conroe. Of those comments, 15 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Five commenters opposed adoption and stated a preference for particular bag, possession, and/or special daily retention limits, as follows. One commenter opposed adoption and stated that no fish over 30 inches in length should be allowed to be retained with an exception for temporary possession for tournament weigh-ins; three commenters opposed adoption and stated that there should be a minimum length limit of 12 inches; and one commenter stated that minimum length requirement of at least 14 inches. The department disagrees with the comments and responds that the rule as adopted is the result of an extensive review of blue and channel catfish harvest regulations, population and angler data, and angler perceptions and represents a balance of management goals and angler preferences. As an exception to the statewide standard harvest regulation, this provision is being implemented on reservoirs and stream segments where the population structure is believed to be capable of producing bigger fish in large numbers. The regulation is intended to direct harvest towards smaller, more abundant fish while protecting fish 20 inches in length and longer, which is expected to result in an increase in the abundance of fish 20 inches and longer, and especially, the abundance of fish 30 inches and larger. The department believes that the proposed modification will affect angling for blue catfish more than angling for channel catfish, as most of the larger fish in these populations are blue catfish. The effects of the removal of the minimum length limit are expected to be minimal, as most anglers prefer to harvest larger-sized fish. No changes were made as a result of the comments.

One commenter opposed adoption and stated that juglines and trotlines should either be prohibited or there should be a limit of 15 juglines per boat and one trotline with not more than 25 hooks per boat. The department disagrees with the comment because it is not germane to the subject of the rulemaking but responds that there is no biological reason to either ban the use of juglines or trotlines on Lake Conroe or to impose additional restrictions on those gears. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that there should be a minimum length limit. The department disagrees with the comment and responds that a minimum length limit on Lake Conroe will not benefit blue and channel catfish populations, as the majority of, if not all, anglers prefer to retain larger fish rather than smaller fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be "no minimum length for keepers." The department is puzzled by the comment. The possession limit is the number of fish that an angler may lawfully possess (i.e., "keepers"). Therefore, the removal of the minimum length limit on Lake Conroe means that any lawfully harvested blue or channel catfish can be kept, provided the daily bag limit is not exceeded. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

The department received 72 comments supporting adoption of the proposed provision.

The department received 34 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Hubbard Creek Reservoir. Of those comments, eight articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Five commenters opposed adoption and stated a preference for particular bag, possession, and/or special daily retention limits, as follows. Three commenters opposed adoption and stated that there should be a minimum length limit of 14 inches; one commenter stated that no fish over 30 inches in length should be allowed to be retained (with an exception for temporary possession for tournament weigh-ins); and one commenter stated that there should be a minimum length limit of 12 inches. The department disagrees with the comments and responds that the rule as adopted is the result of an extensive review of blue and channel catfish harvest regulations, population and angler data, and angler perceptions and represents a balance of management goals and angler preferences. As an exception to the statewide standard harvest regulation, this provision is being implemented on reservoirs and stream segments where the population structure is believed to be capable of producing bigger fish in large numbers. The regulation is intended to direct harvest towards smaller, more abundant fish while protecting fish 20 inches in length and longer, which is expected to result in an increase in the abundance of fish 20 inches and longer, and especially, the abundance of fish 30 inches and larger. The department believes that the proposed modification will affect angling for blue catfish more than angling for channel catfish, as most of the larger fish in these populations are blue catfish. The effects of the removal of the minimum length limit are expected to be minimal, as most anglers prefer to harvest larger-sized fish. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be a minimum length limit. The department disagrees with the comment and responds that a minimum length limit on Hubbard Creek Reservoir will not benefit blue and channel catfish populations, as the majority of, if not all, anglers prefer to retain larger fish rather than smaller fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be "no minimum length for keepers." The department is puzzled by the comment. The possession limit is the number of fish that an angler may lawfully possess (i.e., "keepers"). Therefore, the removal of the minimum length limit on Hubbard Creek Reservoir means that any lawfully harvested blue or channel catfish can be kept, provided the daily bag limit is not exceeded. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

The department received 70 comments supporting adoption of the proposed provision.

The department received 33 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Lake Lavon. Of those comments, nine articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Five commenters opposed adoption and stated a preference for particular bag, possession, and/or special daily retention limits, as follows. Two commenters stated that there should be a minimum length limit of 14 inches; one commenter stated that there should be a minimum length limit of 12 inches; one commenter stated that the rules should retain the current retention limit of seven fish over 20 inches in length; one commenter opposed adoption and stated that there should be a bag limit of 15 fish with no more than five over 20 inches in length. The department disagrees with the comments and responds that the rule as adopted is the result of an extensive review of blue and channel catfish harvest regulations, population and angler data, and angler perceptions and represents a balance of management goals and angler preferences. As an exception to the statewide standard harvest regulation, this provision is being implemented on reservoirs and stream segments where the population structure is believed to be capable of producing bigger fish in large numbers. The regulation is intended to direct harvest towards smaller, more abundant fish while protecting fish 20 inches in length and longer, which is expected to result in an increase in the abundance of fish 20 inches and longer, and especially, the abundance of fish 30 inches and larger. The department believes that the proposed modification will affect angling for blue catfish more than angling for channel catfish, as most of the larger fish in these populations are blue catfish. The effects of the removal of the minimum length limit are expected to be minimal, as most anglers prefer to harvest larger-sized fish. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be a minimum length limit. The department disagrees with the comment and responds that a minimum length limit on Lake Lavon will not benefit blue and channel catfish populations, as the majority of if not all anglers prefer to retain larger fish rather than smaller fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be "no minimum length for keepers." The department is puzzled by the comment. The possession limit is the number of fish that an angler may lawfully possess (i.e., "keepers"). Therefore, the removal of the minimum length limit on Lake Lavon means that any lawfully harvested blue or channel catfish can be kept, provided the daily bag limit is not exceeded. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that no fish over 30 inches in length should be allowed to be retained with an exception for temporary possession for tournament weigh-ins. The department disagrees with the comment and responds that the special daily retention limit imposed by the rule as adopted is believed to provide adequate protection for older classes of fish without jeopardizing the overall health or sustainability of the resource. No changes were made as a result of the comment.

The department received 67 comments supporting adoption of the proposed provision.

The department received 33 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Lake Ray Hubbard. Of those comments, 10 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Six commenters opposed adoption and stated a preference for particular bag, possession, and/or special daily retention limits, as follows. Two commenters stated that there should be a minimum length limit of 14 inches; one commenter opposed adoption and stated that there should be a minimum length limit of 12 inches; one commenter stated that the rules should retain the current retention limit of seven fish over 20 inches in length; one commenter stated that the bag limit should remain at seven fish with a special daily retention limit of not more than five fish over 20 inches in length; one commenter stated that there should be a bag limit of 15 fish with no more than five over 20 inches in length. The department disagrees with the comments and responds that the rule as adopted is the result of an extensive review of blue and channel catfish harvest regulations, population and angler data, and angler perceptions and represents a balance of management goals and angler preferences. As an exception to the statewide standard harvest regulation, this provision is being implemented on reservoirs and stream segments where the population structure is believed to be capable of producing bigger fish in large numbers. The regulation is intended to direct harvest towards smaller, more abundant fish while protecting fish 20 inches in length and longer, which is expected to result in an increase in the abundance of fish 20 inches and longer, and especially, the abundance of fish 30 inches and larger. The department believes that the proposed modification will affect angling for blue catfish more than angling for channel catfish, as most of the larger fish in these populations are blue catfish. The effects of the removal of the minimum length limit are expected to be minimal, as most anglers prefer to harvest larger-sized fish. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be a minimum length limit. The department disagrees with the comment and responds that a minimum length limit on Lake Ray Hubbard will not benefit blue and channel catfish populations, as the majority of, if not all, anglers prefer to retain larger fish rather than smaller fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be "no minimum length for keepers." The department is puzzled by the comment. The possession limit is the number of fish that an angler may lawfully possess (i.e., "keepers"). Therefore, the removal of the minimum length limit on Lake Ray Hubbard means that any lawfully harvested blue or channel catfish can be kept, provided the daily bag limit is not exceeded. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; how-

ever, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that no fish over 30 inches in length should be allowed to be retained with an exception for temporary possession for tournament weigh-ins. The department disagrees with the comment and responds that the retention of one oversize blue or channel catfish per angler per day, given the angling pressure and catfish population structure on Lake Ray Hubbard, is not expected to result in any negative impacts to the population. No changes were made as a result of the comment.

The department received 70 comments supporting adoption of the proposed provision.

The department received 33 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Kirby Lake. Of those comments, eight articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Three commenters opposed adoption and stated a preference for particular bag, possession, and/or special daily retention limits, as follows. One commenter stated that 50 is excessive; one commenter stated that there should be a minimum length limit of 12 inches; and one commenter stated that there should be a minimum length limit of 14 inches. The department disagrees with the comments and responds that the rule as adopted is the result of an extensive review of blue and channel catfish harvest regulations, population and angler data, and angler perceptions and represents a balance of management goals and angler preferences. As an exception to the statewide standard harvest regulation, this provision is being implemented on reservoirs and stream segments where the population structure is believed to be capable of producing bigger fish in large numbers. The regulation is intended to direct harvest towards smaller, more abundant fish while protecting fish 20 inches in length and longer, which is expected to result in an increase in the abundance of fish 20 inches and longer, and especially, the abundance of fish 30 inches and larger. The department believes that the proposed modification will affect angling for blue catfish more than angling for channel catfish, as most of the larger fish in these populations are blue catfish. The effects of the removal of the minimum length limit are expected to be minimal, as most anglers prefer to harvest larger-sized fish. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the lake is too small. The department neither agrees nor disagrees with the comment and responds that harvest regulations are designed to be effective over a wide range of reservoir sizes.

One commenter opposed adoption and stated that there should be a minimum length limit. The department disagrees with the comment and responds that a minimum length limit on Kirby Lake will not benefit blue and channel catfish populations, as the majority of, if not all, anglers prefer to retain larger fish rather than smaller fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be "no minimum length for keepers." The department is puzzled by the comment. The possession limit is the number of fish that an angler may lawfully possess (i.e., "keepers"). Therefore, the removal of the minimum length limit on Kirby Lake means that any lawfully harvested blue or channel catfish can be kept, provided the daily bag limit is not exceeded. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that no fish over 30 inches in length should be allowed to be retained with an exception for temporary possession for tournament weigh-ins. The department disagrees with the comment and responds that the retention of one oversize blue or channel catfish per angler per day, given the angling pressure and catfish population structure on Kirby Lake, is not expected to result in any negative impacts to the population. No changes were made as a result of the comment.

The department received 60 comments supporting adoption of the proposed provision.

The department received 35 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Lake Palestine. Of those comments, eight articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Three commenters opposed adoption and stated a preference for particular bag, possession, and/or special daily retention limits, as follows. One commenter stated that the daily bag limit should be 15 fish, with a special daily retention limit of no more than five fish of over 20 inches in length; one commenter stated that there should be a minimum length limit of 12 inches; and one commenter opposed adoption and stated that there should be a minimum length limit of 14 inches. The department disagrees with the comments and responds that the rule as adopted is the result of an extensive review of blue and channel catfish harvest regulations, population and angler data, and angler perceptions and represents a balance of management goals and angler preferences. As an exception to the statewide standard harvest regulation, this provision is being implemented on reservoirs and stream segments where the population structure is believed to be capable of producing bigger fish in large numbers. The regulation is intended to direct harvest towards smaller, more abundant fish while protecting fish 20 inches in length and longer, which is expected to result in an increase in the abundance of fish 20 inches and longer, and especially, the abundance of fish 30 inches and larger. The department believes that the proposed modification will affect angling for blue catfish more than angling for channel catfish, as most of the larger fish in these populations are blue catfish. The effects of the removal of the minimum length limit are expected to be minimal, as most anglers prefer to harvest larger-sized fish. No changes were made as a result of the comments.

One commenter opposed adoption and stated that juglines and trotlines should be prohibited but if not, there should be a limit of 15 juglines per boat and one trotline per boat with a limit of 25

hooks. The department disagrees with the comment because it is not germane to the subject of the rulemaking and responds that there is no biological reason to either ban the use of juglines or trotlines on Lake Palestine or to impose additional restrictions on those gears. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a minimum length limit. The department disagrees with the comment and responds that a minimum length limit on Lake Palestine will not benefit blue and channel catfish populations, as the majority of if not all anglers prefer to retain larger fish rather than smaller fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be "no minimum length for keepers." The department is puzzled by the comment. The possession limit is the number of fish that an angler may lawfully possess (i.e., "keepers"). Therefore, the removal of the minimum length limit on Lake Palestine means that any lawfully harvested blue or channel catfish can be kept, provided the daily bag limit is not exceeded. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that no fish over 30 inches in length should be allowed to be retained with an exception for temporary possession for tournament weigh-ins. The department disagrees with the comment and responds that the retention of one oversize blue or channel catfish per angler per day, given the angling pressure and catfish population structure on Lake Palestine, is not expected to result in any negative impacts to the population. No changes were made as a result of the comment.

The department received 60 comments supporting adoption of the proposed provision.

The department received 34 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Lake Lewisville. Of those comments, nine articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Five commenters opposed adoption and stated a preference for particular bag, possession, and/or special daily retention limits, as follows. One commenter stated that there should be a minimum length limit of 14 inches; one commenter stated that the special daily retention limit should be no more than one fish over 30 inches; one commenter stated that there should be a bag limit of 15 fish with no more than five over 20 inches in length; one commenter stated that there should be a minimum length limit of 12 inches; and one commenter opposed adoption and stated that there should be a minimum length limit of 14 inches. The department disagrees with the comments and responds that the rule as adopted is the result of an extensive review of blue and channel catfish harvest regulations, population and angler data, and angler perceptions and represents a balance of management goals and angler preferences. As an exception to the statewide standard harvest regulation, this provision is being implemented on reservoirs and stream segments where the population structure is believed to be capable of producing bigger fish in large numbers. The regulation is intended to direct harvest towards smaller, more abundant fish while protecting fish 20 inches in length and longer, which is expected to result in an increase in the abundance of fish 20 inches and longer, and especially, the abundance of fish 30 inches and larger. The department believes that the proposed modification will affect angling for blue catfish more than angling for channel catfish, as most of the larger fish in these populations are blue catfish. The effects of the removal of the minimum length limit are expected to be minimal, as most anglers prefer to harvest larger-sized fish. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be a minimum length limit. The department disagrees with the comment and responds that a minimum length limit on Lake Lewisville will not benefit blue and channel catfish populations, as the majority of if not all anglers prefer to retain larger fish rather than smaller fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be "no minimum length for keepers." The department is puzzled by the comment. The possession limit is the number of fish that an angler may lawfully possess (i.e., "keepers"). Therefore, the removal of the minimum length limit on Lake Lewisville means that any lawfully harvested blue or channel catfish can be kept, provided the daily bag limit is not exceeded. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that no fish over 30 inches in length should be allowed to be retained with an exception for temporary possession for tournament weigh-ins. The department disagrees with the comment and responds that the retention of one oversize blue or channel catfish per angler per day, given the angling pressure and catfish population structure on Lake Lewisville, is not expected to result in any negative impacts to the population. No changes were made as a result of the comment.

The department received 61 comments supporting adoption of the proposed provision.

The department received 33 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Richland-Chambers Reservoir. Of those comments, eight articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Three commenters opposed adoption and stated a preference for particular bag, possession, and/or special daily retention limits, as follows. Two commenters stated that there should be a minimum length limit of 14 inches and one commenter stated

that there should be a minimum length limit of 12 inches. The department disagrees with the comments and responds that the rule as adopted is the result of an extensive review of blue and channel catfish harvest regulations, population and angler data, and angler perceptions and represents a balance of management goals and angler preferences. As an exception to the statewide standard harvest regulation, this provision is being implemented on reservoirs and stream segments where the population structure is believed to be capable of producing bigger fish in large numbers. The regulation is intended to direct harvest towards smaller, more abundant fish while protecting fish 20 inches in length and longer, which is expected to result in an increase in the abundance of fish 20 inches and longer, and especially, the abundance of fish 30 inches and larger. The department believes that the proposed modification will affect angling for blue catfish more than angling for channel catfish, as most of the larger fish in these populations are blue catfish. The effects of the removal of the minimum length limit are expected to be minimal, as most anglers prefer to harvest larger-sized fish. No changes were made as a result of the comments.

One commenter opposed adoption and stated that juglines and trotlines should either be prohibited or there should be a limit of 15 juglines per boat and one trotline with not more than 25 hooks per boat. The department disagrees with the comment because it is not germane to the subject of the rulemaking and responds that there is no biological reason to either ban the use of juglines or trotlines on Richland-Chambers Reservoir or to impose additional restrictions on those gears. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a minimum length limit. The department disagrees with the comment and responds that a minimum length limit on Richland-Chambers Reservoir will not benefit blue and channel catfish populations, as the majority of if not all anglers prefer to retain larger fish rather than smaller fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be "no minimum length for keepers." The department is puzzled by the comment. The possession limit is the number of fish that an angler may lawfully possess (i.e., "keepers"). Therefore, the removal of the minimum length limit on Richland-Chambers Reservoir means that any lawfully harvested blue or channel catfish can be kept, provided the daily bag limit is not exceeded. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that no fish over 30 inches in length should be allowed to be retained with an exception for temporary possession for tournament weigh-ins. The department disagrees with the comment and responds that the retention of one oversize blue or channel catfish per angler per day, given the angling pressure and catfish population structure on Lake Lewisville, is not expected to result in any negative impacts to the population. No changes were made as a result of the comment.

The department received 66 comments supporting adoption of the proposed provision.

The department received 35 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Lake Waco. Of those comments, nine articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Three commenters opposed adoption and stated a preference for particular bag, possession, and/or special daily retention limits, as follows. Two commenters opposed adoption and stated that there should be a minimum length limit of 14 inches and one commenter stated that there should be a minimum length limit of 12 inches. The department disagrees with the comments and responds that the rule as adopted is the result of an extensive review of blue and channel catfish harvest regulations, population and angler data, and angler perceptions and represents a balance of management goals and angler preferences. As an exception to the statewide standard harvest regulation, this provision is being implemented on reservoirs and stream segments where the population structure is believed to be capable of producing bigger fish in large numbers. The regulation is intended to direct harvest towards smaller, more abundant fish while protecting fish 20 inches in length and longer, which is expected to result in an increase in the abundance of fish 20 inches and longer, and especially, the abundance of fish 30 inches and larger. The department believes that the proposed modification will affect angling for blue catfish more than angling for channel catfish, as most of the larger fish in these populations are blue catfish. The effects of the removal of the minimum length limit are expected to be minimal, as most anglers prefer to harvest larger-sized fish. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the slot limit should be narrowed to 35 or 40 inches to protect flathead catfish. The department disagrees with the comment because it is not germane to the subject of the rulemaking, which is harvest regulations for channel and blue catfish, and responds that the department is satisfied with the efficacy of current harvest rules governing flathead catfish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that juglines and trotlines should either be prohibited or there should be a limit of 15 juglines per boat and one trotline with not more than 25 hooks per boat. The department disagrees with the comment because it is not germane to the subject of the rulemaking and responds that there is no biological reason to either ban the use of juglines or trotlines on Lake Waco or to impose additional restrictions on those gears. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a minimum length limit. The department disagrees with the comment and responds that a minimum length limit on Lake Waco will not benefit blue and channel catfish populations, as the majority of if not all anglers prefer to retain larger fish rather than smaller fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be "no minimum length for keepers." The department is puzzled by the comment. The possession limit is the number of fish that an angler may lawfully possess (i.e., "keepers"). Therefore, the removal of the minimum length limit on Lake Waco means that any lawfully harvested blue or channel catfish can be kept, pro-

vided the daily bag limit is not exceeded. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that no fish over 30 inches in length should be allowed to be retained with an exception for temporary possession for tournament weigh-ins. The department disagrees with the comment and responds that the retention of one oversize blue or channel catfish per angler per day, given the angling pressure and catfish population structure on Lake Waco, is not expected to result in any negative impacts to the population. No changes were made as a result of the comment.

The department received 68 comments supporting adoption of the proposed provision.

The department received 38 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Lake Tawakoni. Of those comments, 12 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Six commenters opposed adoption and stated a preference for particular bag, possession, and/or special daily retention limits, as follows. One commenter stated that there should be a minimum length limit of 14 inches; one commenter stated that the rules should retain the current retention limit of seven fish over 20 inches in length; one commenter stated that there should be a bag limit of 15 fish with no more than five over 20 inches in length; one commenter stated that the special daily retention limit should be one fish over 30" in length; one commenter stated that there should be a minimum length limit of 22 inches; and one commenter stated that there should be a minimum length limit of 14 inches. The department disagrees with the comments and responds that the rule as adopted is the result of an extensive review of blue and channel catfish harvest regulations, population and angler data, and angler perceptions and represents a balance of management goals and angler preferences. As an exception to the statewide standard harvest regulation, this provision is being implemented on reservoirs and stream segments where the population structure is believed to be capable of producing bigger fish in large numbers. The regulation is intended to direct harvest towards smaller, more abundant fish while protecting fish 20 inches in length and longer, which is expected to result in an increase in the abundance of fish 20 inches and longer, and especially, the abundance of fish 30 inches and larger. The department believes that the proposed modification will affect angling for blue catfish more than angling for channel catfish, as most of the larger fish in these populations are blue catfish. The effects of the removal of the minimum length limit are expected to be minimal, as most anglers prefer to harvest larger-sized fish. No changes were made as a result of the comments.

One commenter opposed adoption and stated that juglines and trotlines should either be prohibited or there should be a limit of 15 juglines per boat and one trotline with not more than 25 hooks per boat. The department disagrees with the comment because it is not germane to the subject of the rulemaking.

One commenter opposed adoption and stated that there should be a minimum length limit. The department disagrees with the comment and responds that a minimum length limit on Lake Tawakoni will not benefit blue and channel catfish populations, as the majority of, if not all, anglers prefer to retain larger fish rather than smaller fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be "no minimum length for keepers." The department is puzzled by the comment. The possession limit is the number of fish that an angler may lawfully possess (i.e., "keepers"). Therefore, the removal of the minimum length limit on Lake Tawakoni means that any lawfully harvested blue or channel catfish can be kept, provided the daily bag limit is not exceeded. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that no fish over 30 inches in length should be allowed to be retained with an exception for temporary possession for tournament weigh-ins. The department disagrees with the comment and responds that the retention of one oversize blue or channel catfish per angler per day, given the angling pressure and catfish population structure on Lake Tawakoni, is not expected to result in any negative impacts to the population. No changes were made as a result of the comment.

One commenter opposed adoption and stated that a minimum length limit should be instated to protect dwindling populations of channel catfish. The department disagrees with the comment and responds that department data indicate that channel catfish populations on Lake Tawakoni are stable and thriving. No changes were made as a result of the comment.

The department received 70 comments supporting adoption of the proposed provision.

The department received 24 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Lake Braunig. Of those comments, four articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the regulations should impose a special daily retention limit of one fish over 20 inches in length to protect broodfish. The department disagrees with the comment and responds that the imposition of a 14-inch minimum length limit, combined with a 15-fish daily bag limit, is expected to reduce harvest and direct that harvest to larger-sized individuals, which will benefit the population structure. No changes were made as a result of the comment.

One commenter opposed adoption and stated that jug lines and trotlines should be prohibited while the new regulations are in effect. The department disagrees with the comment and re-

sponds that gear type is irrelevant because harvest is controlled by bag, possession, and minimum length limits, not gear type. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

The department received 64 comments supporting adoption of the proposed provision.

The department received 24 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Lake Calaveras. Of those comments, four articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the regulations should impose a special daily retention limit of one fish over 20 inches in length to protect broodfish. The department disagrees with the comment and responds that the imposition of a 14-inch minimum length limit, combined with a 15-fish daily bag limit, is expected to reduce harvest and direct that harvest to larger-sized individuals, which will benefit the population structure. No changes were made as a result of the comment.

One commenter opposed adoption and stated that juglines and trotlines should be prohibited while the new regulations are in effect. The department disagrees with the comment and responds that gear type is irrelevant because harvest is controlled by bag, possession, and minimum length limits, not gear type. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a minimum length limit of 12 inches. The department disagrees with the comment and responds that in response to possible overfishing, the imposition of a 14-inch minimum length limit, combined with a 15-fish daily bag limit, is expected to reduce harvest and direct that harvest to larger-sized individuals, which will benefit the population structure. No changes were made as a result of the comment.

The department received 61 comments supporting adoption of the proposed provision.

The department received 34 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Choke Canyon Reservoir. Of those comments, seven articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the regulations should impose a special daily retention limit of one fish over 20 inches in length to protect broodfish. The department disagrees with the comment and responds that the imposition of a 14-inch minimum length limit, combined with a 15-fish daily bag limit, is expected to reduce harvest and direct that harvest to larger-sized individuals, which will benefit the population structure. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the lake has filled back up again and the special daily retention limit should be one fish of over 30 inches in length. The department disagrees with the comment and responds that there is no biological reason to impose a special daily retention limit in response to fluctuations in water levels unless a drastic reduction is necessary. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that alligator gar need to be controlled because they affect other fish. The department disagrees with the comment and responds that alligator gar are an important component of healthy aquatic systems and there is no biological evidence to suggest the alligator gar populations are in need of control. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the minimum length limit should be 15 inches. The department disagrees with the comment and responds that the imposition of a 14-inch minimum length limit, combined with a 15-fish daily bag limit, is expected to reduce harvest and direct that harvest to larger-sized individuals, which will benefit the population structure. No changes were made as a result of the comment.

One commenter opposed adoption and stated that spring-loaded throw lines should be lawful. The department disagrees with the comment because it is not germane to the subject of the rulemaking and responds that such devices often function by removing the fish from the water where they die, making it impossible to return undersize and oversize fish to the water. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a minimum length limit of 12 inches. The department disagrees with the comment and responds that the imposition of a 14-inch minimum length limit, combined with a 15-fish daily bag limit, is expected to reduce harvest and direct that harvest to larger-sized individuals, which will benefit the population structure. No changes were made as a result of the comment.

The department received 65 comments supporting adoption of the proposed provision.

The department received 25 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Fayette County Reservoir. Of those comments, three articulated a specific reason or rationale for opposing adoption. Those com-

ments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the regulations should impose a special daily retention limit of one fish over 20 inches in length to protect broodfish. The department disagrees with the comment and responds that the imposition of a 14-inch minimum length limit, combined with a 15-fish daily bag limit, is expected to reduce harvest and direct that harvest to larger-sized individuals, which will benefit the population structure. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a minimum length limit of 12 inches. The department disagrees with the comment and responds that because overharvest may be occurring, a minimum length limit of 14 inches is necessary to protect younger age classes of fish. No changes were made as a result of the comment.

The department received 63 comments supporting adoption of the proposed provision.

The department received 25 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Proctor Lake. Of those comments, four articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Various commenters opposed adoption and stated a preference for particular bag, possession, and/or special daily retention limits, as follows.

One commenter opposed adoption and stated that the regulations should impose a special daily retention limit of one fish over 20 inches in length to protect broodfish. The department disagrees with the comment and responds that the imposition of a 14-inch minimum length limit, combined with a 15-fish daily bag limit, is expected to reduce harvest and direct that harvest to larger-sized individuals, which will benefit the population structure. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a bag limit of 15 fish with no more than five over 20 inches in length. The department disagrees with the comment and responds that although a daily bag limit of 15 fish has been adopted, a special daily retention limit is unnecessary since so few fish in Proctor Lake reach those sizes. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a minimum length limit of 12 inches. The department disagrees with the comment and responds that because overharvest may be occurring, a minimum length limit of 14 inches is necessary to protect younger age classes of fish. No changes were made as a result of the comment.

The department received 63 comments supporting adoption of the proposed provision.

The department received 37 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Lake Livingston. Of those comments, 10 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Four commenters opposed adoption and stated a preference for particular bag, possession, and/or special daily retention limits, as follows. One commenter stated that there should be a 12-inch minimum length limit with a 25-fish possession limit, one commenter stated that there should be a minimum length limit of 12 inches, one commenter stated that there should be a minimum length limit of 14 inches with a special daily retention limit of one fish greater than 30 inches in length, and one commenter stated that there should be a bag limit of 15 fish with no more than five over 20 inches in length. The department disagrees with the comments and responds that the rule as adopted is the result of an extensive review of blue and channel catfish harvest regulations, population and angler data, and angler perceptions and represents a balance of management goals and angler preferences. As an exception to the statewide standard harvest regulation, this provision is being implemented because blue catfish populations on Lake Livingston are abundant, recruitment is stable, growth is optimal, and over-exploitation is not a concern. The department believes that removing the minimum length limit, in conjunction with the retention limit on larger fish, will not result in negative population impacts and will distribute the harvest of larger fish to more anglers. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that there should be a minimum length limit. The department disagrees with the comments and responds that a minimum length limit on Lake Livingston will not provide appreciable benefits to blue and channel catfish populations, as the majority of if not all anglers prefer to retain larger fish rather than smaller fish. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the regulation allows too many fish over 30 inches in length to be retained. The department disagrees with the comment and responds that blue catfish populations in Lake Livingston are abundant, recruitment is stable, growth is optimal, and over-exploitation is not a concern. The department believes that removing the minimum length limit, in conjunction with the retention limit on larger fish, will not result in negative population impacts and will distribute the harvest of larger fish to more anglers. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the special daily retention limit of no more than one fish of greater than 30 inches in length does nothing but further the oppression of the small commercial fisherman. The department disagrees with the comment and responds that the department does not believe the regulation as adopted is oppressive and notes that the rule as adopted allows the retention of no more than five fish greater

than 30 inches in length per day. No changes were made as a result of the comment.

One commenter opposed adoption and stated there should be an 18-inch minimum length limit for flathead catfish. The department disagrees with the comment because it is not germane to the subject of the rulemaking, which is harvest regulations for channel and blue catfish, and responds that the department is satisfied with the efficacy of current harvest rules governing flathead catfish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be "no minimum length for keepers." The department is puzzled by the comment. The possession limit is the number of fish that an angler may lawfully possess (i.e., "keepers"). Therefore, the removal of the minimum length limit on Lake Livingston means that any lawfully harvested blue or channel catfish can be kept, provided the daily bag limit is not exceeded. No changes were made as a result of the comment.

The department received 68 comments supporting adoption of the proposed provision.

The department received 33 comments opposing adoption of the portion of the proposed amendment to §57.973 that implemented new harvest regulations for blue and channel catfish on Lake Sam Rayburn. Of those comments, nine articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Four commenters opposed adoption and stated a preference for particular bag, possession, and/or special daily retention limits, as follows. One commenter stated that there should be a 12-inch minimum length limit with a 25-fish possession limit, one commenter stated that there should be a minimum length limit of 12 inches, one commenter stated that there should be a minimum length limit of 14 inches, and one commenter stated that there should be a bag limit of 15 fish with no more than five over 20 inches in length. The department disagrees with the comments and responds that the rule as adopted is the result of an extensive review of blue and channel catfish harvest regulations, population and angler data, and angler perceptions and represents a balance of management goals and angler preferences. As an exception to the statewide standard harvest regulation, this provision is being implemented because blue catfish populations on Lake Sam Rayburn are abundant, recruitment is stable, growth is optimal, and over-exploitation is not a concern. The department believes that removing the minimum length limit, in conjunction with the retention limit on larger fish, will not result in negative population impacts and will distribute the harvest of larger fish to more anglers. No changes were made as a result of the comment.

One commenter opposed adoption and stated that special daily retention limit does nothing but further the oppression of the small commercial fisherman. The department disagrees with the comment and responds that the harvest regulations as adopted are biologically justified and not oppressive. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a minimum length limit. The department disagrees with the comment and responds that a minimum length limit on Lake Sam Rayburn will not benefit blue and channel catfish populations, as the majority of if not all anglers prefer to retain larger fish rather than smaller fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be "no minimum length for keepers." The department is puzzled by the comment. The possession limit is the number of fish that an angler may lawfully possess (i.e., "keepers"). Therefore, the removal of the minimum length limit on Lake Sam Rayburn means that any lawfully harvested blue or channel catfish can be kept, provided the daily bag limit is not exceeded. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many different regulations. The department disagrees with the comment and responds that Texas is a large state with many different ecotypes that affect aquatic resources uniquely; however, the department strives to create basic harvest regulations that are consistent with the precepts of sound biological management across that landscape, with certain exceptions for specific instances in which tailored management strategies are appropriate. No changes were made as a result of the comment.

One commenter opposed adoption and stated there should be an 18-inch minimum length limit for flathead catfish. The department disagrees with the comment because it is not germane to the subject of the rulemaking, which is harvest regulations for channel and blue catfish, and responds that the department is satisfied with the efficacy of current harvest rules governing flathead catfish. No changes were made as a result of the comment.

The department received 71 comments supporting adoption of the proposed provision.

The department received 30 comments opposing adoption of the portion of the proposed amendment to §57.973 that standardized terminology and dimensions for floats use to identify certain fishing gears. Of those comments, seven articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that there should be a limit on the number of hooks attached to juglines and trotlines. The department disagrees with the comment and responds that the topic of the rulemaking is float dimensions; thus, the comment is not germane No changes were made as a result of the comment.

One commenter opposed adoption and stated that smaller floats are a hazard to boats. The department disagrees with the comment and responds that the float dimensions as adopted have been determined by department law enforcement personnel to be of sufficient size for boaters to see easily. No changes were made as a result of the comment.

One commenter opposed adoption and stated that trotlines should not be required to be marked because marking allows unscrupulous individuals to steal fish. The department disagrees with the comment and responds that without a float to tell them where a trotline is, department game wardens cannot check gear tags to ensure that trotlines are being lawfully employed or have not been abandoned. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the number of juglines per vessel should be regulated, as well as the time that juglines may be employed. The department disagrees with the comment and responds that the topic of the rulemaking was float dimensions; thus, the comment is not germane; however, the department responds that current gear regulations are not believed to be resulting in negative impacts to the resource. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the float dimensions are not sufficient to allow lines that have caught big fish to be visible. The department disagrees with the comment and responds that rules specify minimum requirements for float dimensions. Individual anglers are free to employ larger float dimensions if they so desire. No changes were made as a result of the comment.

One commenter opposed adoption and stated that all passive gears should be prohibited. The department disagrees with the comment and responds that passive gear fished by ethical anglers in compliance with the law pose no conflicts with fisheries management or user group conflicts. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule forces anglers to purchase floats and that float color and size should be left up to the individual angler. The department disagrees with the comment and responds that stipulating the size and color of various floats is necessary to impose a uniform standard for purposes of enforcement, which is necessary to avoid situations in which an individual's decision is not consistent with the goal of the rule, which is to alert department enforcement personnel to the presence of fishing gear and the identity of the person who placed that gear. The department also responds that the cost of floats is not believed to be a significant barrier to participation and enjoyment. No changes were made as a result of the comment.

The department received 76 comments supporting adoption of the proposed provision.

The department received 31 comments opposing adoption of the portion of the proposed amendment to §57.992 that implemented commercial fishing regulations for blue and channel catfish on specific waterbodies. Of those comments, 12 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that blue catfish should be designated a game fish. The department agrees with the comment and responds that blue catfish are classified as a game fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule prevents commercial anglers, who pay a higher license fee, from making a living, unlike Louisiana, which places no limits on commercial anglers. The department disagrees with the comment and responds that the department formulates harvest regulations based on the biology of the public resource being regulated, not market factors; that commercial anglers pay a higher license fee because they engage in the exploitation of a public resource for personal profit, and lastly, that management strategies in Louisiana are not necessarily aligned with the management goals of the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a single statewide regulation and sale of game fish should be illegal. The department disagrees with the comment and responds that the high variability of environmental and sociological indices across a geographical area as large and varied as Texas makes a single harvest regulation for the entire state not only impractical but unwise. The department also notes that the sale of catfish is generally illegal, although there are regulatory exceptions for catfish in accordance with biological parameters, as well as certain statutory exceptions for catfish that the department cannot change or modify. No changes were made as a result of the comment.

One commenter opposed adoption and stated uncertainty that commercial fishing should be allowed in public waters. The commenter also stated that guided fishing is commercial fishing and should be regulated more instead of trying to change the rules for every fisherman in the State of Texas. The department disagrees with the comment and responds that the interests of commercial and recreational anglers are balanced in a way to provide equitable enjoyment of the resource for both within the precepts of sound biological management and that because fishing guides are engaged in the business of guiding customers and do not personally retain fish for commercial purposes, they are not engaged in commercial fishing. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that commercial fishing for catfish should not be allowed. The department disagrees with the comment and responds that commercial sale of catfish is sustainable in certain places and Parks and Wildlife Code, §66.111, specifically allows for the commercial sale of blue and channel catfish of over 14 inches in length taken from specific waters, which the department does not have the authority to alter or eliminate. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule gives commercial anglers in one county an unfair advantage over those in other counties. The department disagrees with the comment and responds that the regulations apply equally on all parts of the waterbodies where they are in effect. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit should be 25 fish. The department disagrees and responds that catfish populations on the affected waterbodies are robust and capable of sustaining the daily bag limit as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a minimum length limit. The department disagrees with the comment and responds that a minimum length limit on the affected waterbodies will not result in tangible benefits for blue and channel catfish populations, as commercial anglers seek fish in the size classes most advantageous for sale to the consumer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit should be increased but fish over 20 inches in length should not be retained. The department disagrees with the comment and responds that because catfish populations on the affected waterbodies are robust, there is no need to establish a special retention limit under 30 inches. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a minimum length limit of 14 inches. The department disagrees with the comment and responds that that a minimum length limit on the affected waterbodies will not result in tangible benefits for blue and channel catfish populations, as commercial anglers seek fish in the size classes most advantageous for sale to the consumer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that jug lines should be allowed in state parks. The department disagrees with the comment because it is not germane to the subject of

the rulemaking, but responds that state parks are unique sites with diverse user groups; thus, gear restrictions are typically implemented on a park-by-park basis. No changes were made as a result of the comment.

The department received 68 comments supporting adoption of the proposed provision.

The department received 16 comments opposing adoption of the portion of the proposed amendment to §57.981 regarding red snapper. Of those comments, 10 articulated a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the season in federal waters should be three months long. The department disagrees with the comment and responds a permanent 90-day red snapper season in federal waters is infeasible due to federal requirements on state management of the red snapper fishery. Under state management of the red snapper fishery, TPWD must prohibit further landings of red snapper when the annual catch limit allocated to Texas is reached or projected to be reached. Season lengths will vary from year to year as a result of the state's allocation of red snapper as well as angler fishing effort. As a result of state management of the red snapper fishery, red snapper seasons in federal waters have consistently been longer than those seen prior to 2017. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit should be six fish, two from federal waters and four from state waters. The department disagrees with the comment and responds that the daily bag limit is defined as the quantity of fish allowed to be taken in one day, not the sum of separate bag limits in state and federal waters. There is also no means for game wardens to distinguish a red snapper caught in federal waters from one caught in state waters.

One commenter opposed adoption and stated that red snapper are abundant, and the bag limit should be increased. The department agrees that red snapper are abundant but disagrees that the bag limit should be changed. A recent 2021 study (The Great Red Snapper Count) completed by the Harte Research Institute estimates red snapper populations off Texas to be around 23 million. While this is higher than some other estimates, no federal actions have been taken to increase red snapper allocations to Texas. Without such increases, implementation of higher bag limits would result in federal actions to curtail the length of the red snapper season in federal waters, decreasing fishing opportunities for Texas anglers. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit should be eight fish per day irrespective of where the fish are caught. The department disagrees with the comment and responds that without federal action to increase red snapper allocations to Texas, implementation of higher bag limits would result in federal actions to curtail the length of the red snapper season in federal waters, decreasing fishing opportunities for Texas anglers. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the federal bag limit should be increased in order to have a four-fish per day limit, making the location of catch irrelevant. The department disagrees with the comment and responds that the department has no authority to establish bag limits in federal waters. There is also no means for enforcement personnel to distinguish a red snapper caught in federal waters from a red snapper caught in state waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that bag limits in state and federal waters should be identical, Texas game wardens should not be enforcing federal law, and that the rule unnecessarily restricts fisherman because there are plenty of red snapper. The department disagrees with the comment and responds that making bag limits in state and federal waters identical would require the state to lower the bag limit for state waters to match the lower bag limit in federal waters, which would limit opportunity for Texas anglers. The department further responds that it has no authority to establish bag limits in federal waters and that the primary duty of department law enforcement personnel is to enforce harvest regulations imposed by the state.

Three commenters opposed adoption and stated that the state rules for red snapper should be identical to the federal rules. The department disagrees with the comment and responds that making the bag limits in state and federal waters identical would require the state to lower the bag limit for state waters to match the lower bag limit in federal waters. This would limit opportunity for Texas anglers. The department also notes that it does not have the authority to alter bag limits in federal waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that federal and state red snapper rules should be kept separate. The department disagrees with the comment and responds that because anglers must transit state waters in order to access federal waters and return from them and there is no way for law enforcement personnel to distinguish fish caught in federal waters from fish caught in state waters, it is impractical to treat federal and state waters as two completely separate regulatory arenas. No changes were made as a result of the comment.

DIVISION 1. GENERAL PROVISIONS

31 TAC §57.973

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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 July 26, 2021.

TRD-202102882
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: September 1, 2021
Proposal publication date: February 19, 2021
For further information, please call: (512) 389-4775

DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.981

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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 July 26, 2021.

TRD-202102881
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: September 1, 2021
Proposal publication date: February 19, 2021
For further information, please call: (512) 389-4775

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DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

31 TAC §57.992

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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 July 26, 2021.

TRD-202102883
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: September 1, 2021
Proposal publication date: February 19, 2021
For further information, please call: (512) 389-4775

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Texas

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) is conducting its annual review of the definitions of the terms "local exchange access line" and "equivalent local exchange access line" as required by Health and Safety Code §771.063(c). Due to the potentially disruptive changes resulting from advancements in technology, particularly with respect to mobile Internet Protocol-enabled services, CSEC takes no position on whether current 1 TAC §255.4 sufficiently defines the foregoing terms.

Persons wishing to comment on CSEC's initial determination or recommend amendments to §255.4 may do so by submitting written comments 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 "Comments on Rule 255.4" in the subject line of your letter, fax, or email.

TRD-202102916
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: July 29, 2021

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Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (Department) files this notice of intent to review Texas Administrative Code, Title 4, Part 1, Chapter 7, Subchapter H, Structural Pest Control Service.

This review is being conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years.

The Department will consider whether the initial factual, legal, and policy reasons for adopting each rule in this subchapter continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

The Department is accepting comments pertaining to this rule review. Comments may be submitted within 30 days following the publication of this notice in the *Texas Register.* Comments may be submitted to Morris Karam, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to Morris.Karam@TexasAgriculture.gov.

TRD-202103022
Skylar Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: August 3, 2021

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Texas Historical Commission

Title 13, Part 2

The Texas Historical Commission files this notice of intent to review and consider for re-adoption, revision or repeal, Chapter 11 - Administration Department; Chapter 12 - Texas Historic Courthouse Preservation Program; Chapter 14 - Texas Historical Artifacts Acquisition Program; Chapter 15 - Administration of Federal Programs; Chapter 16 - Historic Sites; Chapter 19 - Texas Main Street Program; Chapter 20 - Awards; Chapter 22 - Cemeteries; Chapter 23 - Publications; Chapter 25 - State Archeological Program; and Chapter 26 - Practice and Procedure.

Pursuant to Texas Government Code 2001.039, the Texas Historical Commission will assess whether the reason(s) for initially adopting these rules continue to exist. The rules will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Commission and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedures Act).

The Commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.* Comments as to whether the reasons for initially adopting these rules continue to exist may be submitted to Esther Brickley, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276, or by email to esther.brickley@thc.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-202102942
Mark Wolfe
Executive Director
Texas Historical Commission
Filed: July 29, 2021

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Adopted Rule Reviews

Department of Information Resources

Title 1, Part 10

The Texas Department of Information Resources (department) has completed its review of 1 Texas Administrative Code (TAC) Chapter 215, concerning Statewide Technology Centers, pursuant to Texas Government Code §2001.039, which requires agency rules to be reviewed at least every four years. The department determined the reasons for initially adopting 1 TAC Chapter 215 continue to exist.

Notice of the rule review was published in the May 17, 2019, issue of the *Texas Register* (44 TexReg 2473). No comments were received as a result of that notice.

As a result of the rule review, the department published proposed amendments to 1 TAC Chapter 215 in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1807). The DIR Board adopted the amended rules at the open meeting of the DIR Board of Directors on July 25, 2021, and the adoption notice was published in the July 30, 2021, issue of the *Texas Register* (46 TexReg 4681).

The department's review of 1 TAC Chapter 215 is concluded.

TRD-202103029
Kate Fite
General Counsel
Department of Information Resources
Filed: August 3, 2021

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Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) has concluded the statutory review of its Chapter 253 rules. Based on its review, CSEC readopts without amendment each of the rules in Chapter 253.

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's notice of intent to review its Chapter 253 rules was published in the June 4, 2021, issue of the *Texas Register* (46 TexReg 3553). The review assessed and determined that the original reasons and justification for adopting each rule continue to exist and remain valid; each rule is required by statute.

No comments were received regarding CSEC's notice of review. This notice concludes CSEC's statutory review of its Chapter 253 rules.

TRD-202102917
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: July 29, 2021

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §25.475(g)(6)

Electricity Facts Label (EFL)
{Name of REP}, {Name of Product}, {Service area *(if applicable)*},
{Date}

Electricity price

Average Monthly Use	500kWh	1,000kWh	2,000kWh
Average price per kWh	{x.x}¢	{x.x}¢	{x.x}¢
For POLR use: Minimum price per kilowatt-hour.	{x.x}¢	{x.x}¢	{x.x}¢

{If applicable} On-peak {season or time}:{xxx}
{If applicable} Average on-peak price per kilowatt-hour: {x.x}¢
{If applicable} Average off-peak price per kilowatt-hour: {x.x}¢
{If applicable} Potential surcharges corresponding to the given electric service.
{If variable that does not change within a defined percentage} **Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may change in subsequent months at the sole discretion of {insert REP name}.**
{If residential} **Please review the historical price of this product available at {insert website address and toll-free number}.**

{If variable that changes within a defined percentage}
Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may increase by no more than {insert percentage} percent from month-to-month. {If residential} **Please review the historical price of this product available at {insert website address and toll-free number}.**

Other Key Terms and Questions

See Terms of Service statement for a full listing of fees, deposit policy, and other terms.

Type of Product	(fixed rate indexed or variable)
Contract Term	(number of months)
Do I have a termination fee or any fees associated with terminating service?	(yes/no) (if yes, how much)
Can my price change during contract period?	(yes/no)

Disclosure Chart	If my price can change, how will it change, and by how much?	(formula/description of the way the price will vary and how much it can change) In addition if the REP chooses to pass through regulatory changes the following must [shall] be required: "The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control."
	What other fees may I be charged?	(List, or give direct location in TOS.)
	Is this a pre-pay or pay in advance product	(yes/no)
	Does the REP purchase excess distributed renewable generation?	(yes/no)
	Renewable Content	(This product is x% renewable)
	The statewide average for renewable content is	(% of statewide average for renewable content)
	Contact info, certification number, version number *Additional information may be added below.*	

Figure: 26 TAC §553.267(d)(3)

Texas Health and Human Services Commission (HHSC)

Information Regarding Authorized Electronic Monitoring

A resident, or the resident's guardian or legal representative, is entitled to conduct authorized electronic monitoring (AEM) under Health and Safety Code, Chapter 247 §247.003. To request AEM, you, your guardian or your legal representative, must:

1) complete the Request for Authorized Electronic Monitoring form (available from the facility);

2) obtain the consent of other residents, if any, in your room, using the Consent to Authorized Electronic Monitoring form (available from the facility); and

3) give the form(s) to the facility manager or designee.

Who may request AEM?

1) The resident, if the resident has capacity to request AEM and has not been judicially declared to lack the required capacity.

2) The guardian of the resident, if the resident has been judicially declared to lack the required capacity.

3) The legal representative of the resident, if the resident does not have capacity to request AEM and has not been judicially declared to lack the required capacity.

Who determines if the resident does not have the capacity to request AEM?

The resident's physician will make the determination regarding the capacity to request AEM. When the resident's physician has determined the resident lacks capacity to request AEM, a person from the following list, in order of priority, may act as the resident's legal representative for the limited purpose of requesting AEM:

1) a person named in the resident's medical power of attorney or another advance directive;

2) the resident's spouse;

3) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decision-maker;

4) a majority of the resident's reasonably available adult children;

5) the resident's parents; or

6) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.

Who may consent to AEM?

1) The other resident(s) in the room.

2) The guardian of the other resident, if the resident has been judicially declared to lack the required capacity.

3) The legal representative of the other resident, if the resident does not have capacity to sign the form but has not been judicially declared to lack the required capacity. The legal representative is determined by following the procedure for determining a legal representative, as stated above, under "Who determines if the resident does not have the capacity to request AEM?"

Can a resident be discharged or refused admittance for requesting AEM?

A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct AEM. If either of these situations occur, you should report the occurrence to the local office of Long Term Care-Regulatory, HHSC.

What about covert electronic monitoring?

A facility may not discharge a resident because covert electronic monitoring is being conducted by or on behalf of a resident. A facility attempting to discharge a resident because of covert electronic monitoring should be reported to the local office of Long-term Care-Regulation, HHSC.

What is required if a covert electronic monitoring device is discovered?

If a covert electronic monitoring device is discovered by a facility and is no longer covert as defined in §553.3 of this chapter (relating to Definitions), the resident must meet all requirements for AEM before monitoring is allowed to continue.

Is notice of AEM required?

Anyone conducting AEM must post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that an electronic monitoring device is monitoring the room.

What is required for the installation of monitoring equipment?

The resident, or the resident's guardian or legal representative, must pay for all costs associated with conducting AEM, including installation in compliance with life safety and electrical codes, maintenance, removal of the equipment, posting and removal of the notice, or repair following removal of the equipment and notice, other than the cost of electricity.

A facility may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. A facility may also require that AEM be conducted in plain view.

The facility must make reasonable physical accommodation for AEM, which includes providing:

1) a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

2) access to power sources for the video surveillance camera or other electronic monitoring device.

If the facility refuses to permit AEM or fails to make reasonable physical accommodations for AEM, you should report the facility's refusal to the local office of Long-term Care Regulation, HHSC.

Are facilities subject to administrative penalties for violations of the electronic monitoring rules?

Yes. HHSC may assess an administrative penalty (see §553.751 of this chapter (relating to Administrative Penalties)) against a facility for each instance in which the facility:

1) refuses to permit a resident, or the resident's guardian or legal representative, to conduct AEM:

2) refuses to admit an individual or discharges a resident because of a request to conduct AEM;

3) discharges a resident because covert electronic monitoring is being conducted by or on behalf of the resident; or

4) violates any other provision related to AEM.

How does AEM affect the reporting of abuse and neglect?

Section 553.273 of this chapter (relating to Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities), requires facility staff to report abuse or neglect. If abuse or neglect has occurred, the most important thing is to report it. Abuse and neglect cannot be addressed unless reported.

For purposes of the duty to report abuse or neglect, the following apply:

1) A person who is conducting electronic monitoring on behalf of a resident is considered to have viewed or listened to a recording made by the electronic monitoring device on or before the 14th day after the date the recording is made.

2) If a resident, who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring, gives a recording made by the electronic monitoring device to a person and directs the person to view or listen to the recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the recording is considered to have viewed or listened to the recording on or before the seventh day after the date the person receives the recording.

3) A person is required to report abuse based on the person's viewing of or listening to a recording only if an incident of abuse is indicated on the recording. A person is required to report

neglect based on the person's viewing of or listening to a recording only if it is clear from viewing or listening to the recording that neglect has occurred.

4) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant recording made by an electronic monitoring device, the person who possesses the recording must provide the facility with a copy at the facility's expense. The cost of the copy cannot exceed the community standard.

5) A person who sends more than one recording to DHS must identify each recording on which the person believes an incident of abuse or evidence of neglect may be found. Tapes or recordings should identify the place on the recording that an incident of abuse or evidence of neglect may be found.

What is required for the use of a recording by an agency or court?

a) Subject to applicable rules of evidence and procedure, a recording created through the use of covert monitoring or AEM may be admitted into evidence in a civil or criminal court action or administrative proceeding.

b) A court or administrative agency may not admit into evidence a recording created through the use of covert monitoring or AEM or take or authorize action based on the recording unless:

1) the recording shows the time and date the events on the recording occurred, if the recording is a video recording;

2) the contents of the recording have not been edited or artificially enhanced; and

3) any transfer of the contents of the recording was done by a qualified professional and the contents were not altered, if the contents have been transferred from the original format to another technological format.

Are there additional provisions of the law?

A person who places an electronic monitoring device in the room of a resident or who uses or discloses a other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another.

A person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device.

_____ _____

Signature of Resident/Person Signing of Behalf of Resident Date

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/09/21 - 08/15/21 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 08/09/21 - 08/15/21 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 08/01/21 - 08/31/21 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 08/01/21 - 08/31/21 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-202103021
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 3, 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 **September 14, 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 **September 14, 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: Beard's Exxon LLC; DOCKET NUMBER: 2021-0267-PST-E; IDENTIFIER: RN101910206; LOCATION: Linden, Cass County; TYPE OF FACILITY: out-of-service underground storage tank facility; RULES VIOLATED: 30 TAC §334.7(d)(1) and (3)(B) and (e)(2), by failing to notify the agency of changes to the underground storage tank (UST) system by submitting an amended registration within 30 days of the change, and failing to accurately fill out the UST registration form; 30 TAC §§334.49(c)(2)(C), 334.50(b)(1)(A), and 334.54(b)(2) and (3), and (c)(1) and TWC, §26.3475 (c)(1) and (d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, and failing to monitor the out-of-service USTs in a manner which will detect a release at a frequency of at least once every 30 days, and furthermore, failing to secure the UST system to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator, Class A, Class B, and Class C for the facility; PENALTY: $7,376; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: BlueLinx Corporation; DOCKET NUMBER: 2020-1185-PST-E; IDENTIFIER: RN102827417; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers, and catchment basins of an underground storage tank system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once every 30 days in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days; PENALTY: $20,403; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Channing Volunteer Fire & EMS Department; DOCKET NUMBER: 2021-0300-MSW-E; IDENTIFIER: RN111145876; LOCATION: Channing, Hartley County; TYPE OF FACILITY: unauthorized municipal solid waste site; RULE VIO-

LATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Courtney Atkins, (512) 239-1118; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: CITGO Refining and Chemicals Company L.P.; DOCKET NUMBER: 2020-1175-AIR-E; IDENTIFIER: RN102555166; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 111.111(a)(1)(B), 116.115(c), and 122.143(4), New Source Review Permit Numbers 3123A, 9604A, 19044, and 20156 and PSDTX653M1, Special Conditions Number 1, Federal Operating Permit Number O1423, General Terms and Conditions and Special Terms and Conditions Number 28, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $28,876; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(5) COMPANY: City of Burkburnett; DOCKET NUMBER: 2020-1583-MWD-E; IDENTIFIER: RN105767453; LOCATION: Burkburnett, Wichita 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 WQ0010002001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of Cresson; DOCKET NUMBER: 2020-1610-MWD-E; IDENTIFIER: RN105239354; LOCATION: Cresson, Hood 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 WQ0014805001, Interim I Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: $4,125; ENFORCEMENT COORDINATOR: Alyssa Loveday, (512) 239-5504; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Hackberry; DOCKET NUMBER: 2020-1496-MWD-E; IDENTIFIER: RN102077054; LOCATION: Hackberry, Denton 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 WQ0013434001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $43,937; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: City of Huntington; DOCKET NUMBER: 2020-1548-PWS-E; IDENTIFIER: RN101184638; LOCATION: Huntington, Angelina County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(d)(4)(B), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on May 28, 2020 and August 25, 2020, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive samples were collected; 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the executive director (ED) within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for total trihalomethanes for Stage 2 Disinfection Byproducts at Site 1 during the third quarter of 2020; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed, and report the results to the ED director for the July 1, 2018 - June 30, 2020, monitoring periods; and 30 TAC §290.117(n), by failing to comply with the additional sampling requirements as required by the ED to ensure that minimal levels of corrosion are maintained in the distribution system; PENALTY: $18,834; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 676-7487; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: City of Seadrift; DOCKET NUMBER: 2020-0890-MWD-E; IDENTIFIER: RN101920627; LOCATION: Seadrift, Calhoun County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §217.33(a) and §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010822001, Monitoring Requirements Number 5, by failing to have automatic flow measuring devices accurately calibrated by a trained person at plant start-up and thereafter not less often than annually; 30 TAC §305.125(1) and TPDES Permit Number WQ0010822001, Monitoring and Reporting Requirements Number 7.c, by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of noncompliance; 30 TAC §305.125(1) and §319.6 and TPDES Permit Number WQ0010822001, Monitoring and Reporting Requirements Number 1, by failing to assure the quality of all measurements through the use of blanks, standards, duplicates, and spikes; 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010822001, Permit Conditions Number 2.d, by failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010822001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010822001, Permit Conditions Number 2(g), by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; 30 TAC §319.7(a), by failing to maintain records for each measurement or sample taken; 30 TAC §319.11(a) and (b), by failing to conduct sample collection according to the recommended sampling and testing methods; and 30 TAC §319.11(c), by failing to comply with recommended sampling and testing methods; PENALTY: $54,865; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $43,892; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(10) COMPANY: Eastman Chemical Company; DOCKET NUMBER: 2020-1040-AIR-E; IDENTIFIER: RN100219815; LOCATION: Longview, Harrison County; TYPE OF FACILITY: organic chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Numbers 48588 and 48590, Special Conditions Number 1, Federal Operating Permit Number O1979, General Terms and Conditions and Special Terms and Conditions Number 15, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,350; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8912; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2020-1161-AIR-E; IDENTIFIER: RN102323268; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY:

energy production plant; RULES VIOLATED: 30 TAC §§116.115(c), 116.615(2), and 122.143(4), Standard Permit Registration Number 95777, New Source Review Permit Number 144873, Special Conditions Number 1, Federal Operating Permit Numbers O1641 and O4187, General Terms and Conditions and Special Terms and Conditions Numbers 11 and 19, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $14,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,850; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Fairview Gardens Developments, LLC; DOCKET NUMBER: 2021-0305-PWS-E; IDENTIFIER: RN103786448; LOCATION: Jersey Village, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(6), by failing to provide sampling taps for raw water, treated water, and at a point representing water entering the distribution system at every entry point; 30 TAC §290.46(f)(2) and (3)(A)(iv), and (B)(v), 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(n)(1), by failing to maintain at the public water system 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)(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; and 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; PENALTY: $250; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Freeport LNG Development, L.P.; DOCKET NUMBER: 2021-0284-AIR-E; IDENTIFIER: RN103196689; LOCATION: Quintana, Brazoria County; TYPE OF FACILITY: natural gas liquefaction facility; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 100114, Special Conditions Number 1, Federal Operating Permit Number O2878, General Terms and Conditions and Special Terms and Conditions Number 13, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $2,626; ENFORCEMENT COORDINATOR: Alyssa Loveday, (512) 239-5504; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: J. H. STRAIN & SONS, INCORPORATED; DOCKET NUMBER: 2021-0153-PST-E; IDENTIFIER: RN102432564; LOCATION: Tye, Taylor County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(1) and (2)(A) and (B)(i)(II) and TWC, §26.3475(b) and (c)(1), by failing to monitor the USTs for releases in a manner that will detect a release at a frequency of at least once every 30 days, and failing to monitor the suction piping associated with the UST system at least once every 30 days; PENALTY: $4,800; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: MICRO STAR, INCORPORATED dba Power Mart 3; DOCKET NUMBER: 2021-0302-PST-E; IDENTIFIER: RN102494275; LOCATION: League City, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; PENALTY: $1,927; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: MUNISHA, INCORPORATED dba Grab All Drive Inn Grocery; DOCKET NUMBER: 2021-0304-PST-E; IDENTIFIER: RN101823995; LOCATION: Santa Fe, Galveston 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 in a manner that will detect a release at a frequency of at least once every 30 days; PENALTY: $4,575; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: SIDDIQUE USA, INCORPORATED dba Alto Quick Stop; DOCKET NUMBER: 2020-1220-PST-E; IDENTIFIER: RN102399375; LOCATION: Alto, Cherokee County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.50(b)(2) and (d)(1)(B)(ii) and TWC, §26.3475(a) and (c)(1), by failing to conduct reconciliation of detailed inventory control records at least once every 30 days in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons, and failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $8,063; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: Smith County; DOCKET NUMBER: 2021-0297-WQ-E; IDENTIFIER: RN105481261; LOCATION: Tyler, Smith County; TYPE OF FACILITY: municipal separate storm sewer system; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System General Permit Number TXR040040, Part IV, Section B(2), by failing to submit a concise annual report to the executive director within 90 days of the end of each reporting year; PENALTY: $1,125; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(19) COMPANY: Texas TransEastern, Incorporated; DOCKET NUMBER: 2020-1281-WQ-E; IDENTIFIER: RN107503336; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: petroleum product transportation; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of industrial waste into or adjacent to any water in the state; PENALTY: $22,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $11,250; ENFORCEMENT COORDINATOR: Alyssa Loveday, (512) 239-5504; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Veolia ES Technical Solutions, L.L.C.; DOCKET NUMBER: 2021-0233-AIR-E; IDENTIFIER: RN102599719; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: hazardous waste treatment and disposal site; RULES VIOLATED: 30 TAC §§101.20(3), 113.620, 116.115(b)(2)(F) and (c), and 122.143(4), 40 Code of Federal Regulations §63.1209(g)(2), New Source Review Permit Number 42450, Special Conditions Numbers 1 and 13, Federal Operating Permit Number O1509, General Terms and Conditions

and Special Terms and Conditions Numbers 1.A and 15, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: $8,550; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $3,420; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202103017
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: August 3, 2021

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Notice of Correction to 30 TAC Chapter 335 Proposed Amendments and Notice of Public Hearing

Notice of Correction to 30 TAC Chapter 335 Proposed Amendments and Notice of Public Hearing

The Texas Commission on Environmental Quality (commission) published proposed amendments to 30 TAC Chapter 335 and a Notice of Public Hearing on 30 TAC Chapter 335 in the July 30, 2021, issue of the *Texas Register* (46 TexReg 4586, 4729). The preamble and notice incorrectly list the Rule Project Number for submittal of comments as 2021-006-332-WS rather than 2019-086-335-WS. Errors are as submitted by the commission and should be corrected as follows:

On page 4603 of the proposed preamble, in the Submittal of Comments section, the sentence should read: **All comments should reference Rule Project Number 2019-086-335-WS. The comment period closes August 30, 2021.**

On page 4729 of the Notice of Public Hearing, the listed proposed amendments in the first sentence should include 335.503, rather than 33.503.

On page 4729 of the Notice of Public Hearing, in the Submittal of Comments section, the sentence should read: **All comments should reference Rule Project Number 2019-086-335-WS. The comment period closes August 30, 2021.**

For questions concerning this error, please contact Gwen Ricco at (512) 239-2678.

TRD-202103032
Patricia Duron
Program Supervisor, General Law Division
Texas Commission on Environmental Quality
Filed: August 3, 2021

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Notice of Correction to Agreed Order Number 18

In the April 23, 2021, issue of the *Texas Register* (46 TexReg 2842), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 18, for SJWTX, Incorporated dba Canyon Lake Water Service Company, Docket Number 2020-0514-MWD-E. The error is as submitted by the commission.

The reference to the Docket Number should be corrected to read: "2020-0514-MLM-E."

For questions concerning this error, please contact Michael Parrish at (512) 239-2548.

TRD-202103018
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: August 3, 2021

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Notice of District Petition

Notice issued July 29, 2021

TCEQ Internal Control No. D-06242021-036; Huffines Ranch, LLC, a Texas limited liability company (Petitioner), filed a petition for the creation of North Collin County Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 662.006 acres located within Collin County, Texas; and (4) none of the land within the proposed District is within the corporate limits of any city. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water from municipal, domestic and commercial purposes; (2) collect, transport, process, dispose of and control domestic, and commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water in the proposed District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes or improvements in aid of those roads; and (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project and it is estimated by the Petitioners that the cost of said project will be approximately $157,660,000 ($72,690,000 for water, wastewater, and drainage plus $84,970,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing re-

quest is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202102926
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 29, 2021

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Billy Kizer: SOAH Docket No. 582-21-2875; TCEQ Docket No. 2020-0083-MSW-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. - September 2, 2021

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 429 5288

Password: z6gsMu

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

Meeting ID: 161 429 5288

Password: 819771

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed March 26, 2021 concerning assessing administrative penalties against and requiring certain actions of Billy Kizer, for violations in Fannin County, Texas, of: 30 Texas Administrative Code §330.15(a) and (c).

The hearing will allow Billy Kizer, 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 Billy Kizer, 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 Billy Kizer 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.** Billy Kizer, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code ch. 7, Tex. Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 330; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jess Robinson, 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: August 3, 2021

TRD-202103037
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 4, 2021

♦ ♦ ♦

Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Diane Murray and John Murray: SOAH Docket No. 582-21-2877; TCEQ Docket No. 2020-0688-MLM-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. - September 2, 2021

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 429 5288

Password: z6gsMu

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

Meeting ID: 161 429 5288

Password: 819771

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed March 23, 2021 concerning assessing administrative penalties against and requiring certain actions of Diane Murray and John Murray, for violations in Galveston County, Texas, of: Texas Health & Safety Code §382.085(b) and 30 Texas Administrative Code §111.201 and §330.15(a) and (c).

The hearing will allow Diane Murray and John Murray, 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 Diane Murray and John Murray, 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 Diane Murray and John Murray 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.** Diane Murray and John Murray, 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 ch. 7, Tex. Health & Safety Code chs. 361 and 382, and 30 Texas Administrative Code chs. 70, 111, and 330; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting David Keagle, 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: August 3, 2021

TRD-202103038
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 4, 2021

♦ ♦ ♦

Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Hassan LLC dba Cluebra Food Stop: SOAH Docket No. 582-21-2666; TCEQ Docket No. 2021-0084-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. - August 26, 2021

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 160 637 0022

Password: irfNu6

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252 or (646) 828-7666

Meeting ID: 160 637 0022

Password: 873790

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed March 19, 2021 concerning assessing administrative penalties against and requiring certain actions of Hassan LLC dba Cluebra Food Stop, for violations in Bexar County, Texas, of: 30 Texas Administrative Code §§334.50(b)(1)(B), (b)(2)(A)(iii), and 334.602(a); and Texas Water Code §26.3475(c)(1) and (a).

The hearing will allow Hassan LLC dba Cluebra Food Stop, 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 Hassan LLC dba Cluebra Food Stop, 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 Hassan LLC dba Cluebra Food Stop 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. Hassan LLC dba Cluebra Food Stop, 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 Tex. Water Code chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Taylor Pearson, 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: July 29, 2021

TRD-202103039
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 4, 2021

♦ ♦ ♦

Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of P. J. MORALES & ASSOCIATES REAL ESTATE, LLC: SOAH Docket No. 582-21-2863; TCEQ Docket No. 2020-1463-MLM-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. - September 2, 2021

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 429 5288

Password: z6gsMu

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

Meeting ID: 161 429 5288

Password: 819771

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed April 12, 2021, concerning assessing administrative penalties against and requiring certain actions of P. J. MORALES & ASSOCIATES REAL ESTATE, LLC, for violations in Medina County, Texas, of: 30 Texas Administrative Code §111.201, §330.15(a) and (c), and Texas Health & Safety Code § 382.085(b).

The hearing will allow P. J. MORALES & ASSOCIATES REAL ESTATE, LLC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford P. J. MORALES & ASSOCIATES REAL ESTATE, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of P. J. MORALES & ASSOCIATES REAL ESTATE, LLC to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** P. J. MORALES & ASSOCIATES REAL ESTATE, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code ch. 7, Tex. Health & Safety Code chs. 361 and 382, and 30 Texas Administrative Code chs. 70, 111, and 330; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Roslyn Dubberstein, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: August 3, 2021

TRD-202103040
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 4, 2021

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of REBEL CONTRACTORS, INC.: SOAH Docket No. 582-21-2667; TCEQ Docket No. 2019-1386-WQ-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. - September 2, 2021

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 823 1172

Password: RebelSep2

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

Meeting ID: 161 823 1172

Password: 474059841

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed March 29, 2021, concerning assessing administrative penalties against and requiring certain actions of REBEL CONTRACTORS, INC., for violations in Montgomery County, Texas, of: Texas Water Code §26.121(a), 30 Texas Administrative Code §305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR15756U, Part II, Section E.3 and Part III, Sections F, G.1, and G.4.

The hearing will allow REBEL CONTRACTORS, INC., 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 REBEL CONTRACTORS, INC., 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 REBEL CONTRACTORS, INC. 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.** REBEL CONTRACTORS, INC., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code chs. 7 and 26, and 30 Texas Administrative Code chs. 70 and 305; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Christopher Mullins, 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: August 3, 2021

TRD-202103041
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 4, 2021

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Notice of Public Meeting for TPDES Permit for Municipal Wastewater: New Permit No. WQ0015917001

APPLICATION. Green Valley Special Utility District, P.O. Box 99, Marion, Texas 78124, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015917001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. TCEQ received this application on August 31, 2020.

The facility will be located at 4060 Stapper Rd., Saint Hedwig, in Bexar County, Texas 78152. The treated effluent will be discharged to Wom-

ans Hollow Creek, thence to Martinez Creek, thence to the Lower Cibolo Creek in Segment No. 1902 of the San Antonio River Basin. The unclassified receiving water use is limited aquatic life use for Womans Hollow Creek. The designated uses for Segment No. 1902 are primary contact recreation and high aquatic life use. In accordance with 30 Texas Administrative Code, section 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This 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. For the exact location, refer to the application.

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-98.1904%2C29.4705&level=12

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT/PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, September 14, 2021 at 7:00 P.M.

Lubianski Dance Hall

(Note: The Dance Hall is behind the Feed Store)

13640 FM 1346

St. Hedwig, Texas 78152

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our website at https://www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at St. Hedwig City Hall, 13065 Farm-to-Market Road 1346, St. Hedwig, Texas. Further information may also be obtained from Green Valley Special Utility District at the address stated above or by calling Mr. Pat Allen at (830) 914-2330.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: August 03, 2021

TRD-202103024
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 3, 2021

♦ ♦ ♦

Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit: Amendment Proposed Permit No. 1797B

Application. Sprint Fort Bend County Landfill, L.P., P.O. Box 940339, Houston, in Harris County, Texas 77094, a waste management company, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize to increase the size and waste disposal capacity of the facility to extend the site life and provide for ongoing waste disposal needs of individuals, businesses, and communities in Fort Bend County and the surrounding areas. The facility is *located* at 16007 West Bellfort Ave., Sugar Land, in Fort Bend County, Texas 77498. The TCEQ received this application on July 8, 2021. The permit application is available for viewing and copying at the Sugar Land Branch Library, 550 Eldridge Road, Sugar Land, in Fort Bend County, Texas 77478, and may be viewed online at http://www.biggsandmathews.com/permits.php. 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/09j0X. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of

public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Sprint Fort Bend County Landfill, L.P. at the address stated above or by calling Mr. Dan Harris, P.E., Engineering and Compliance Manager at (281) 277-7344.

TRD-202102966
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 30, 2021

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Texas Facilities Commission

Request for Proposals (RFP) #303-3-20716

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) 303-3-20716. TFC seeks a ten (10) year lease of approximately 9,939 square feet of office space and 195 square feet of outdoor lounge area in Abilene, Texas.

The deadline for questions is August 24, 2021, and the deadline for proposals is September 8, 2021, at 3:00 p.m. The award date is October 21, 2021. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting Jenny Ruiz, at jenny.ruiz@tfc.texas.gov. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://www.txsmartbuy.com/esbddetails/view/303-3-20716.

TRD-202102971
Rico Gamino
Director of Procurement
Texas Facilities Commission
Filed: July 30, 2021

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Request for Proposals (RFP) #303-2-20724

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) 303-2-20724. TFC seeks a five (5) or ten (10) year lease of approximately 5,373 square feet of office space in Harlingen, Cameron County, Texas.

The deadline for questions is August 24, 2021, and the deadline for proposals is August 31, 2021, at 3:00 p.m. The award date is September 16, 2021. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting Jenny Ruiz, at jenny.ruiz@tfc.texas.gov. A copy of the

RFP may be downloaded from the Electronic State Business Daily at http://www.txsmartbuy.com/esbddetails/view/303-2-20724.

TRD-202102994
Rico Gamino
Director of Procurement
Texas Facilities Commission
Filed: August 2, 2021

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Texas Department of Insurance

Company Licensing

Application for Community First Group Hospital Service Corporation, a domestic non-profit group hospital, to change its name to Community First Insurance Plans. The home office is in San Antonio, Texas.

Application for incorporation in the state of Texas for Access to Care Health Plan, LLC, a domestic Health Maintenance Organization (HMO). The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Amy Garcia, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202103042
James Person
General Counsel
Texas Department of Insurance
Filed: August 4, 2021

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Texas Department of Licensing and Regulation

Notice of Vacancies on Driver Training and Traffic Safety Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces nine vacancies on the Driver Training and Traffic Safety Advisory Committee (Committee) established by Texas Education Code, Chapter 1001. The purpose of the Committee is to provide advice and recommendations to the Texas Commission of Licensing and Regulation (Commission) and the Department on rules and educational and technical matters relevant to the administration of this chapter. Members will serve an important role in assisting the agency implement the key changes due to HB 1560. The Committee meets at the call of the Executive Director or the presiding officer of the Commission. Service as a Committee member is voluntary, and compensation is not authorized by law.

The Committee consists of nine members appointed for staggered six-year terms by the presiding officer of the Commission, with the approval of the Commission. If a license is required to hold any of the member positions on the Committee, the license must be issued by the State of Texas, in good standing at appointment and throughout the balance of the term. **This announcement is for the following nine Committee member vacancies:**

- Three driver education providers;

- Three driving safety providers;

- One driver education instructor;

- One division head of the Department of Public Safety Driver License Division or the Division head's designee; and

- One public member.

Interested persons should complete an application on the Department website at: https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx. Applicants can also request an application by e-mail advisory.boards@tdlr.texas.gov.

These are not paid positions and there is no compensation or reimbursement for serving on the committee.

Issued in Austin, Texas on August 3, 2021.

TRD-202103026
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: August 3, 2021

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Notice of Vacancies on Motor Fuel Metering and Quality Advisory Board

The Texas Department of Licensing and Regulation (Department) announces eleven vacancies on the Motor Fuel Metering and Quality Advisory Board (Board) established by Senate Bill 2062 of the 87th Legislative Session, by amending Chapter 2310 of the Occupations Code, by adding Subchapter A-1. The purpose of the Board is to provide advice and recommendations to the Commission of Licensing and Regulation and the Department on the

1. adoption of appropriate standards for the installation, maintenance, calibration, alteration, operation, testing, or inspection as applicable of motor fuel dispensing devices; motor fuel metering devices; and motor fuel;

2. education and curricula for applicants for a license issued under this chapter and license holders, and the content of examinations;

3. proposed rules and standards on technical issues related to motor fuel metering and quality and payment card skimmers; and

4. other issues affecting motor fuel metering and quality.

Service as a board member is voluntary, and compensation is not authorized by law.

The Board consists of eleven members appointed for staggered six-year terms by the presiding officer of the Commission, with the approval of the Commission. **This announcement is for the following eleven Board member vacancies:**

- Four members who are dealers or representatives designated by the dealers, including:

--- One dealer with fewer than 501 motor fuel metering devices registered with the department;

--- One dealer with more than 1,000 but fewer than 5,000 motor fuel metering devices registered with the department;

--- One dealer with more than 5,000 motor fuel metering devices registered with the department; and

--- One dealer without regard to the dealer's number of motor fuel metering devices registered with the department.

- Two members who represent service companies, as defined by Section 2310.151;

- One member who represents a wholesaler or distributor;

- One member who represents a supplier;

- One public member; and

- Two ex officio nonvoting members of the board who represent:

--- A financial institution or a credit card issuer other than a financial institution; and

--- One member who represents a law enforcement agency.

Interested persons should complete an application on the Department website at: https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx. Applicants can also request an application by e-mail at advisory.boards@tdlr.texas.gov.

These are not paid positions and there is no compensation or reimbursement for serving on the Board.

Issued in Austin, Texas, August 13, 2021.

TRD-202103031
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: August 3, 2021

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Notice of Vacancies on the Barbering and Cosmetology Advisory Board

The Texas Department of Licensing and Regulation (Department) announces nine vacancies on the Barbering and Cosmetology Advisory Board (Board) established by Texas Occupations Code, Chapter 1603. The purpose of the Board is to provide advice and recommendations to the Texas Commission of Licensing and Regulation (Commission) and the Department on education and curricula for applicants; content of examinations; proposed rules and standards on technical issues; and other issues affecting barbering and cosmetology. Members will serve an important role by assisting the agency in implementing key changes as a result of HB 1560. The Board meets at the call of the Executive Director or the presiding officer of the Commission.

The Board consists of nine members appointed for staggered six-year terms by the presiding officer of the Commission, with the approval of the Commission. If a license is required to hold any of the member positions on the Board, the license must be issued by the State of Texas, in good standing at appointment and throughout the balance of the term. This announcement is for the following vacancies:

- Four members who each hold an individual practitioner license under Subchapter E-1* including:

--- At least one holder of a Class A Barber license; and

--- At least one holder of a Cosmetology Operator license;

- Two members who each hold an establishment license;

- Two members who each hold a school license; and

- One public member.

Interested persons should complete an application on the Department website at: https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx or request an application via e-mail at advisory.boards@tdlr.texas.gov.

These are not paid positions and there is no compensation or reimbursement for serving on the Board.

*Subchapter E-1: a license for an individual practitioner, establishment, or school

Issued in Austin, Texas on August 13, 2021.

TRD-202103030
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: August 3, 2021

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Texas Lottery Commission

Scratch Ticket Game Number 2310 "$30,000 JACKPOT"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2310 is "$30,000 JACKPOT". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2310 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2310.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 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, 2X SYMBOL, ARMORED CAR SYMBOL, MONEYBAG SYMBOL, BANK SYMBOL, GOLD BAR SYMBOL, DOLLAR BILL SYMBOL, COIN SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, NECKLACE SYMBOL, SAFE SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $500 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2310 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
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
2X SYMBOL	DBL
ARMORED CAR SYMBOL	ARMCAR
MONEYBAG SYMBOL	BAG
BANK SYMBOL	BANK
GOLD BAR SYMBOL	BAR
DOLLAR BILL SYMBOL	BILL
COIN SYMBOL	COIN
CROWN SYMBOL	CROWN
DIAMOND SYMBOL	DIAMOND
NECKLACE SYMBOL	NECKLACE
SAFE SYMBOL	SAFE
$2.00	TWO$
$4.00	FOR$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2310), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2310-0000001-001.

H. Pack - A Pack of the "$30,000 JACKPOT" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$30,000 JACKPOT" Scratch Ticket Game No. 2310.

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 "$30,000 JACKPOT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-four (24) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. $50 BONUS: If the player reveals 2 matching Play Symbols in the $50 BONUS, the player wins $50. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-four (24) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-four (24) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-four (24) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-four (24) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to eleven (11) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have two (2) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "2X" (DBL) Play Symbol will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "2X" (DBL) Play Symbol will only appear on winning Tickets as dictated by the prize structure.

I. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

J. No Prize Symbol in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 10 and $10).

K. $50 BONUS: Tickets winning $50 in the $50 BONUS play area will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "$30,000 JACKPOT" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and,

if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$30,000 JACKPOT" Scratch Ticket Game prize of $30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$30,000 JACKPOT" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$30,000 JACKPOT" 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 "$30,000 JACKPOT" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,120,000 Scratch Tickets in Scratch Ticket Game No. 2310. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2310 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	948,480	9.62
$4.00	729,600	12.50
$5.00	145,920	62.50
$10.00	109,440	83.33
$20.00	72,960	125.00
$50.00	61,066	149.35
$100	4,028	2,264.15
$500	304	30,000.00
$30,000	5	1,824,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.40. 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. 2310 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. 2310, 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-202103033
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 3, 2021

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Scratch Ticket Game Number 2365 "BREAK THE SNOWBANK"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2365 is "BREAK THE SNOWBANK". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2365 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2365.

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, GIFT SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2365 - 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
GIFT SYMBOL	DBL
$2.00	TWO$
$4.00	FOR$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$1,000	ONTH
$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2365), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2365-0000001-001.

H. Pack - A Pack of the "BREAK THE SNOWBANK" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "BREAK THE SNOWBANK" Scratch Ticket Game No. 2365.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "BREAK THE SNOWBANK" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-three (23) Play Symbols. The player scratches the entire play area to reveal 3 LOCK NUMBERS Play Symbols and 10 YOUR NUMBERS Play Symbols. If the player matches any of the YOUR NUMBERS Play Symbols to any of the LOCK NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "GIFT" Play Symbol, the player wins DOUBLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-three (23) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-three (23) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-three (23) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-three (23) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to ten (10) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have three (3) different LOCK NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "GIFT" (DBL) Play Symbol will never appear in the LOCK NUMBERS Play Symbol spots.

H. The "GIFT" (DBL) Play Symbol will only appear on winning Tickets as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No Prize Symbol in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 05 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "BREAK THE SNOWBANK" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BREAK THE SNOWBANK" Scratch Ticket Game prize of $1,000 or $30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BREAK THE SNOWBANK" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "BREAK THE SNOWBANK" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "BREAK THE SNOWBANK" 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 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2365. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2365 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	864,000	8.33
$4.00	518,400	13.89
$5.00	115,200	62.50
$10.00	86,400	83.33
$20.00	57,600	125.00
$50.00	48,000	150.00
$100	3,570	2,016.81
$1,000	60	120,000.00
$30,000	5	1,440,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.25. 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. 2365 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. 2365, 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-202103019
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 3, 2021

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North Central Texas Council of Governments

Request for Proposals - Intermodal Transportation Hubs for Colleges and Universities

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from qualified firms for an Intermodal Transportation Hubs for Colleges and Universities Study. The purpose of this project is to develop a comprehensive guide for planning and strategic implementation of mobility hubs on college and university campuses around the region. The study will focus on existing transportation needs and conditions, impacts to transit ridership and connections, the built environment, bicycle and pedestrian facilities, and other transportation modes and supporting infrastructure for circulation on and around campuses.

Proposals must be received no later than 5:00 p.m., Central Time, on Friday, September 10, 2021, to Ezra Pratt, Transportation Planner II, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to TransRFPs@nctcog.org. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on Friday, August 13, 2021.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202103043

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: August 4, 2021

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Texas Parks and Wildlife Department

Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

M. J. Whitley has applied to the Texas Parks and Wildlife Department (TPWD) for a General Permit pursuant to Texas Parks and Wildlife Code, Chapter 86 to remove or disturb up to 1,000 cubic yards of sedimentary material within Johnson Creek in Kerr County. The purpose of the disturbance is to repair erosion and restore damage on the creek bank following a flood. The location is approximately 2.5 miles downstream of Byars Springs Road and 1.5 miles upstream of Bluff Trails Road. Notice is being published and mailed pursuant to Title 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 11:00 a.m. on September 3, 2021. Due to COVID-19 transmission concerns with travelling and person-to-person gatherings, the public comment hearing will be conducted through remote participation. Potential attendees should contact Tom Heger at (512) 389-4583 or at tom.heger@tpwd.texas.gov for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register* or a newspaper, whichever is later. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, Texas 78744; fax (512) 389-4405; or e-mail tom.heger@tpwd.texas.gov.

TRD-202103034
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: August 3, 2021

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Texas State Soil and Water Conservation Board

Request for Proposals for the Fiscal Year 2022 Clean Water Act §319(h) Nonpoint Source Grant Program

PROPOSALS DUE: September 24, 2021

INTRODUCTION

This request for proposals (RFP) provides instructions and guidance for applicants seeking funding from the Texas State Soil and Water Conservation Board (TSSWCB) under the Clean Water Act (CWA) §319(h) Nonpoint Source (NPS) Grant Program. The U.S. Environmental Protection Agency (EPA) distributes funds appropriated by Congress annually to the TSSWCB under the authorization of CWA §319(h). TSSWCB then administers/awards these federal funds as grants to cooperating entities for activities that address the goals, objectives, and priorities stated in the *Texas NPS Management Program.* The *Texas NPS Management Program* is the State's comprehensive strategy to protect and restore water quality in waterbodies impacted by NPS water pollution. This document can be accessed online at https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program.

The types of agricultural and silvicultural NPS pollution prevention and abatement activities that can be funded with §319(h) grants include the following: (1) implementation of nine-element watershed protection plans (WPPs) and the agricultural and silvicultural NPS portion of Total Maximum Daily Load (TMDL) Implementation Plans (I-Plans); (2) surface water quality monitoring, data analysis and modeling, demonstration of innovative best management practices (BMPs); (3) technical assistance to landowners for conservation planning; (4) public outreach/education, development of nine-element WPPs including the formation and facilitation of stakeholder groups; and (5) monitoring activities to determine the effectiveness of specific pollution prevention methods. Strictly research activities are not eligible for §319(h) grant funding.

Proposals Requested

The TSSWCB is requesting proposals for watershed assessment, planning, implementation, demonstration, and education projects within the boundaries of impaired or threatened watersheds. The Texas Integrated Report of Surface Water Quality (https://www.tceq.texas.gov/waterquality/assessment) describes the water quality conditions for waterbodies in the state. All proposals must focus on the restoration and protection of water quality consistent with the goals, objectives, and priority watersheds and aquifers identified in Appendix C and D of the *Texas NPS Management Program.* Up to $1 million of the TSSWCB's FY2022 CWA §319(h) grant will be eligible for award under this RFP. No more than 10% of these funds may be utilized for groundwater projects. A competitive proposal process will be used so that the most appropriate and effective projects are selected for available funding.

Applicants that submit project proposals should, where applicable, focus on interagency coordination, demonstrate new or innovative technologies, use comprehensive strategies that have statewide applicability, and highlight public participation. Examples of project proposals previously funded by TSSWCB are available at: https://www.tsswcb.texas.gov/index.php/programs/texas-nonpoint-source-management-program/active-nonpoint-source-grant-projects.

Additionally, applicants are encouraged to review EPA's Grant Guidelines for the NPS Program available at https://www.epa.gov/nps/319-grant-program-states-and-territories.

Individual Award Amounts

This RFP does not set a maximum or minimum award amount for individual projects; however, project funding generally ranges between $100,000 and $400,000 for a two to three-year project.

Reimbursement and Matching Requirements

The TSSWCB CWA §319(h) NPS Grant Program has a 60/40% match requirement, however proposals that do not meet the minimum matching requirement will still be considered. The cooperating entity will be reimbursed up to 60% from federal funds and must contribute a minimum of 40% of the total costs to conduct the project. The match must be from non-federal sources (may be cash or in-kind services) and must be described in the budget justification. Reimbursable indirect costs are limited to no more than 15% of total federal direct costs.

Required Reporting and QAPP

Quarterly progress and final reports are the minimum project reporting requirements. All projects that include an environmental

data collection, generation or compilation component (e.g., water quality monitoring, modeling, bacterial source tracking) must have a Quality Assurance Project Plan (QAPP), to be reviewed and approved by TSSWCB and the EPA. Project budgets and timelines should account for the development and review of QAPPs, final reports, and watershed protection plans. More information on QAPPs and the *TSSWCB Environmental Data Quality Management Plan* is available at https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program/environmental-data-quality-management.

TSSWCB PRIORITIES

For this FY2022 RFP, the following project priorities have been identified. Proposals that do not focus on these priorities are still welcomed but may score lower than those that focus on the priorities.

Priority Project Activities

--Implement WPPs and TMDL I-Plans (see priority areas listed below).

--WPP development initiatives (see Appendix C in *Texas NPS Management Program),* which include activities such as the formation of watershed groups or water quality data collection and analysis.

--Implement components of the *Texas Coastal NPS Pollution Control Program* in the Coastal Management Zone (https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program/coastal-nonpoint-source-pollution-control-program).

--Support use of federal Farm Bill Programs and Initiatives (National Water Quality Initiative (NWQI).

--Demonstration projects and/or development/delivery of education programs.

Priority Areas for WPP Implementation Projects

--WPPs

--Mill Creek

--Leon River

--Geronimo and Alligator Creeks

--Lake Lavon

--Plum Creek (Segment 1810)

--Lampasas River

--Double Bayou

--Navasota River

--Attoyac Bayou

--Mid and Lower Cibolo

ELIGIBLE ORGANIZATIONS

Grants will be available to public and private entities such as local municipal and county governments and other political subdivisions of the State (e.g., soil and water conservation districts), educational institutions, non-profit organizations, and state and federal agencies. Private organizations (for profit), may participate in projects as partners or contractors but may not apply directly for funding.

SELECTION PROCESS AND AWARD

Review Process

TSSWCB will review each proposal that is submitted by the deadline by an eligible organization.

--At any time during the review process, a TSSWCB staff member may contact the applicant for additional information.

--All areas of the budget are subject to review and approval by TSSWCB.

Scoring

Reviewed proposals will be scored and ranked based on the evaluation and ranking criteria included in this RFP on pp. 19-20. A minimum scoring requirement (70%) is necessary for proposals to be eligible for consideration.

All applicants, unsuccessful and successful, will be notified. Those applicants whose proposals are recommended for funding will be contacted, and then TSSWCB will work with the applicant to revise and finalize the proposal prior to submittal to EPA. EPA must review and approve all proposals prior to TSSWCB awarding grant funds. All grant awards will be contingent on the selected applicant's return of a grant contract provided by TSSWCB which will incorporate all applicable state and federal contracting requirements.

Grant Award Decisions

During the grant review and award process, the TSSWCB may take into consideration other factors including whether the applicant has demonstrated acceptable past performance as a grantee in areas related to programmatic and financial stewardship of grant funds.

TSSWCB may choose to award a grant contract from a different TSSWCB funding source than that for which the applicant applied.

TSSWCB is not obligated to award a grant at the total amount requested and/or within the budget categories requested. TSSWCB reserves the right to make awards at amounts above and/or below the stated funding levels. All grant decisions including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the TSSWCB. The decisions made by the TSSWCB are final and are not subject to appeal.

Funding Priority

TSSWCB reserves the right to consider all other appropriations or funding an applicant currently receives when making funding decisions.

Grant Award Notification

All applicants, unsuccessful and successful, will be notified. Those applicants whose proposals are recommended for funding will be contacted, and then TSSWCB will work with the applicant to revise and finalize the proposal prior to submittal to EPA. EPA must review and approve all proposals prior to TSSWCB awarding grant funds. TSSWCB may utilize a grant contract document and/or a notice of grant document once a decision is made to award a grant. The applicant will be given a deadline to accept the grant award and to return the appropriate document to the TSSWCB within the time prescribed by the TSSWCB. An applicant's failure to return the signed document to the TSSWCB within the prescribed time period will be construed as a rejection of the grant award, and the TSSWCB may de-obligate funds.

Special Conditions

The TSSWCB may assign special conditions at the time of the award. Until satisfied, these special conditions may affect the applicant's ability to receive funds. If special conditions are not resolved, the TSSWCB may de-obligate funds up to the entire amount of the grant award.

ELIGIBLE BUDGET CATEGORIES

--Personnel

--Fringe Benefits

--Travel

--Equipment

--Supplies

--Contractual

--Construction

--Other

--Indirect

INELIGIBLE COSTS

Ineligible costs include, but are not limited to:

--Contracting for grant activities that would otherwise be provided by employees of the grantee's organization

--Payment for lobbying

--Purchasing food and beverages except as allowed under Texas State Travel Guidelines

--Purchasing or leasing vehicles

--Purchasing promotional items or recreational activities

--Paying for travel that is unrelated to the direct delivery of services that supports the project funded under this RFP

--Paying consultants or vendors who participate directly in writing a grant application

--Paying any portion of the salary or any other compensation for an elected government official

--Payment of bad debt, fines or penalties

--Purchasing any other products or services the TSSWCB identifies as inappropriate or unallowable.

--Any unallowable costs set forth in state or federal cost principles

--Any unallowable costs set forth in the NPS Grant Program.

STATE AND FEDERAL REQUIREMENTS

All applicants should review and be familiar with the TSSWCB administrative rules governing Nonpoint Source Grant Program. These rules are published in Texas Administrative Code, Title 31, Part 17, Chapter 523, §523.1(b)(2): https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=31&pt=17&ch=523&rl=1

In addition to the TSSWCB's administrative rules, applicants should be familiar with the Uniform Grant Management Standards (UGMS) and relevant Code of Federal Regulations (CFR) that relate to state, and if applicable, federal grant funding. UGMS can be found at: https://comptroller.texas.gov/purchasing/grant-management/. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR 200 can be found at: http://www.ecfr.gov.

SUBMISSION PROCESS

To obtain a complete copy of TSSWCB's RFP and proposal submission packet, please visit https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program or contact Jana Lloyd at (254) 231-2491. All proposals must be submitted electronically (MS® Word) using the workplan template provided in this RFP; otherwise, proposals will be considered administratively incomplete and not considered for funding. All letters of support for the proposal, including letters from Project Partners confirming their role, must be received by the proposal due date to be considered. Submit proposals to jlloyd@tsswcb.texas.gov. Proposals must be received electronically by 5:00 p.m. CDT, September 24, 2021, to be considered.

FY2022 GRANT TIMELINE

Issuance of RFP August 13, 2021

Deadline for Submission of Proposals September 24, 2021

Proposal Evaluation by TSSWCB October-November 2021

Notification of Selected Proposals/Unsuccessful applicants December 2021

Work with applicants to Finalize Selected Proposals November- December 2021

Review of Selected Proposals by EPA January 2022

Submit Grant Application to EPA May 2022

Contract Award August 2022

Anticipated Project Start Date September 1, 2022

ATTACHMENTS

--Workplan Template is on pp. 8-18 of this RFP

--Evaluation and Ranking Criteria are on pp. 19-20 of this RFP

--TSSWCB Certifications are on pp. 21-27 of this RFP.

TRD-202103035
Liza Parker
Policy Analyst/Legislative Liaison
Texas State Soil and Water Conservation Board
Filed: August 4, 2021

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Supreme Court of Texas

Order Adding Comment to Texas Rule of Civil Procedure 107

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 21-9082

ORDER ADDING COMMENT TO TEXAS RULE OF CIVIL PROCEDURE 107

ORDERED that:

1. In accordance with Act of May 31, 2021, 87th Leg., R.S., ch. 787 (HB 39, codified at TEX. FAM. CODE § 85.006), the Court approves the following comment to Rule 107 of the Texas Rules of Civil Procedure.

2. The comment takes effect September 1, 2021.

3. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this Order to each elected member of the Legislature; and

   d. submit a copy of the Order for publication in the *Texas Register*.

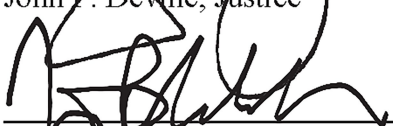
Dated: August 2, 2021

Nathan L. Hecht, Chief Justice

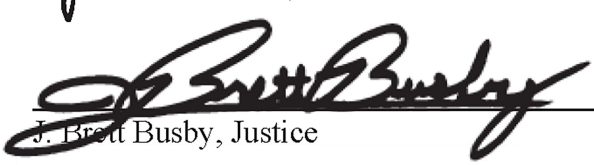
Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

John P. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice

Jane N. Bland, Justice

Rebeca A. Huddle, Justice

Rule 107. Return of Service

***

(h) No default judgment shall be granted in any cause until proof of service as provided by this rule or by Rules 108 or 108a, or as ordered by the court in the event citation is executed by an alternative method under Rule 106, shall have been on file with the clerk of the court ten days, exclusive of the day of filing and the day of judgment.

Notes and Comments

***

2021 Comment: Certain default orders, like those in suits for protection from family violence, may be exempt by statute from the ten-day requirement in paragraph (h). *See, e.g.*, TEX. FAM. CODE § 85.006.

TRD-202103015
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: August 2, 2021

♦ ♦ ♦

Order Amending Texas Rule of Civil Procedure 199.1(B)

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 21-9083

ORDER AMENDING TEXAS RULE OF CIVIL PROCEDURE 199.1(b)

ORDERED that:

1. The Court approves the following amendments to Rule 199.1(b) of the Texas Rules of Civil Procedure.

2. To effectuate the Act of May 31, 2021, 87th Leg., R.S., ch. 934 (HB 3774, codified at TEX. GOV'T CODE § 154.105), the amendments are effective September 1, 2021. But the amendments may later be changed in response to public comments. Written comments should be sent to rulescomments@txcourts.gov. The Court requests comments be sent by November 1, 2021.

3. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

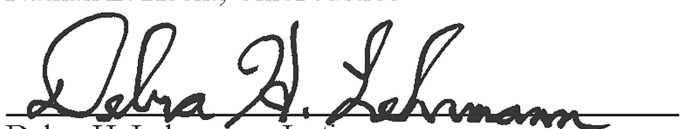
   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this Order to each elected member of the Legislature; and

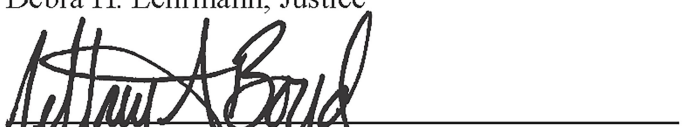
   d. submit a copy of the Order for publication in the *Texas Register*.

Dated: August 2, 2021

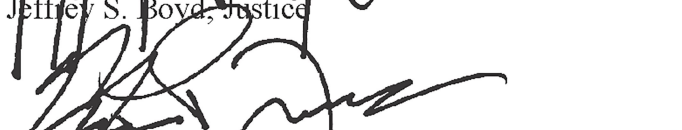
Nathan L. Hecht, Chief Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice

James D. Blacklock, Justice

J. Brett Busby, Justice

Jane N. Bland, Justice

Rebeca A. Huddle, Justice

RULE 199. DEPOSITIONS UPON ORAL EXAMINATION

199.1 Oral Examination; Alternative Methods of Conducting or Recording.

***

(b) **Depositions by telephone or other remote electronic means.** A party may take an oral deposition by telephone or other remote electronic means if the party gives reasonable prior written notice of intent to do so. For the purposes of these rules, an oral deposition taken by telephone or other remote electronic means is considered as having been taken in the district and at the place where the witness is located when answering the questions. ~~The officer taking the deposition may be located with the party noticing the deposition instead of with the witness if the witness is placed under oath by a person who is present with the witness and authorized to administer oaths in that jurisdiction.~~

***

Comment to 2021 change: Rule 199.1(b) is amended in response to changes to section 154.105 of the Texas Government Code governing the administration of oaths by court reporters.

♦ ♦ ♦

TRD-202103016
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: August 2, 2021


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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