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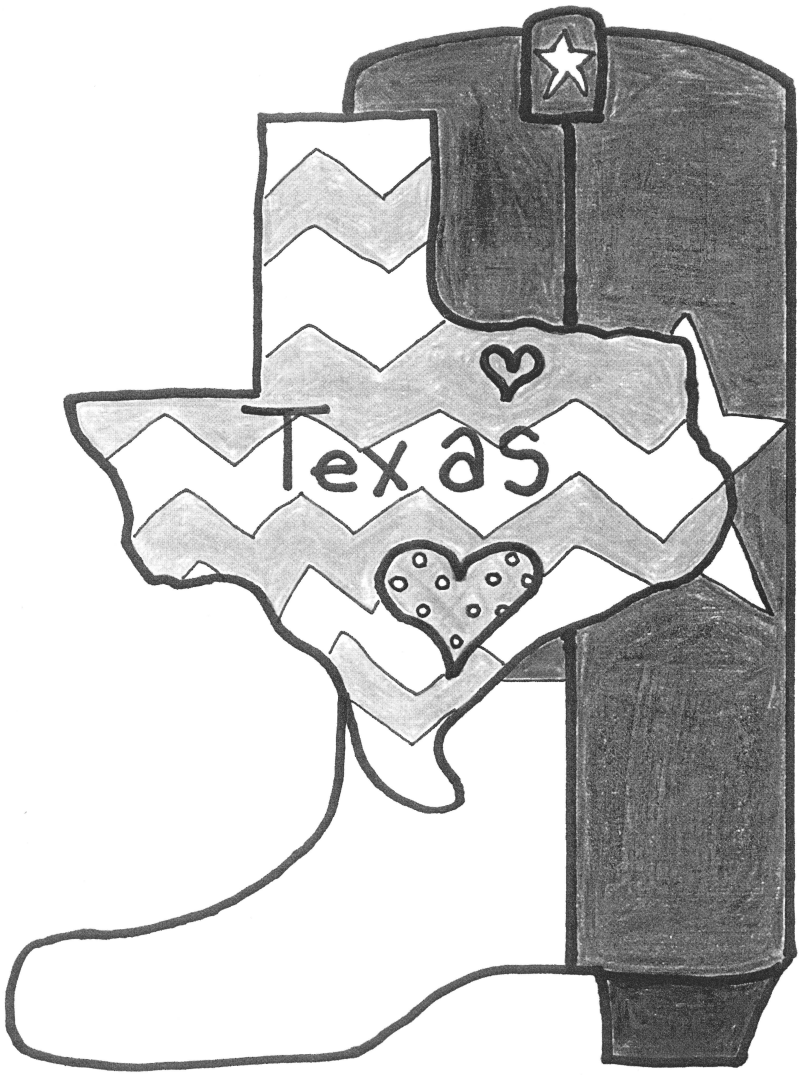
In This Issue


Texas

THE GOVERNOR

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

Appointments

Appointments for October 29, 2021

Appointed to the Industry-Based Certification Advisory Council pursuant to HB 3938, 87th Legislature, Regular Session, for terms to be determined as set forth by law, Kendal S. Carrillo of Austin, Texas.

Appointed to the Industry-Based Certification Advisory Council pursuant to HB 3938, 87th Legislature, Regular Session, for terms to be determined as set forth by law, Donna G. McKethan of Waco, Texas.

Appointed to the Industry-Based Certification Advisory Council pursuant to HB 3938, 87th Legislature, Regular Session, for terms to be determined as set forth by law, Ronald D. "Ron" Rohrbacher of League City, Texas.

Appointments for November 1, 2021

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2024, Christopher M. "Mark" Baird of San Angelo, Texas (replacing Lonny Matthew "Matt" Berend of Scotland, whose term expired).

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2024, Glenda J. Born of Austin, Texas (replacing Paul R. Hunt of Austin, whose term expired).

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2024, Lisa M. Taylor Cowart of Sour Lake, Texas (Ms. Cowart is being reappointed).

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2024, Michele L. Dobbins of Pasadena, Texas (replacing Crystal W. Stark of College Station, whose term expired).

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2024, April S. Pollreisz of Amarillo, Texas (Ms. Pollreisz is being reappointed).

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2024, Joseph D. "Joe" Powell of Irving, Texas (Mr. Powell is being reappointed).

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2024, James E. Williams, Jr., Ed.D. of Leander, Texas (replacing JoAnne J. Fluke of Abilene, whose term expired).

Appointed to the Texas State Board of Examiners of Psychologists, for a term to expire October 31, 2027, John K. Bielamowicz of Waxahachie, Texas (Mr. Bielamowicz is being reappointed).

Appointed to the Texas State Board of Examiners of Psychologists, for a term to expire October 31, 2027, Mark E. Cartwright, Ph.D. of Dallas, Texas (replacing Ronald S. "Ron" Palomares, Ph.D. of Dallas, whose term expired).

Appointed to the Texas State Board of Examiners of Psychologists, for a term to expire October 31, 2027, Roxana I. Lambdin, Ph.D. of Kerrville, Texas (replacing Susan Fletcher, Ph.D. of Plano, whose term expired).

Appointments for November 3, 2021

Appointed to the Texas Commission on Virtual Education pursuant to HB 3643, 87th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Bernard "Bernie" Francis of Carrollton, Texas.

Appointed to the Texas Commission on Virtual Education pursuant to HB 3643, 87th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Rex W. Gore of Austin, Texas (Mr. Gore will serve as the presiding officer of the commission).

Appointed to the Texas Commission on Virtual Education pursuant to HB 3643, 87th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Hannah C. Smith of Southlake, Texas.

Appointed to the Texas Commission on Virtual Education pursuant to HB 3643, 87th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Josue Tamarez Torres of Forney, Texas.

Greg Abbott, Governor

TRD-202104428

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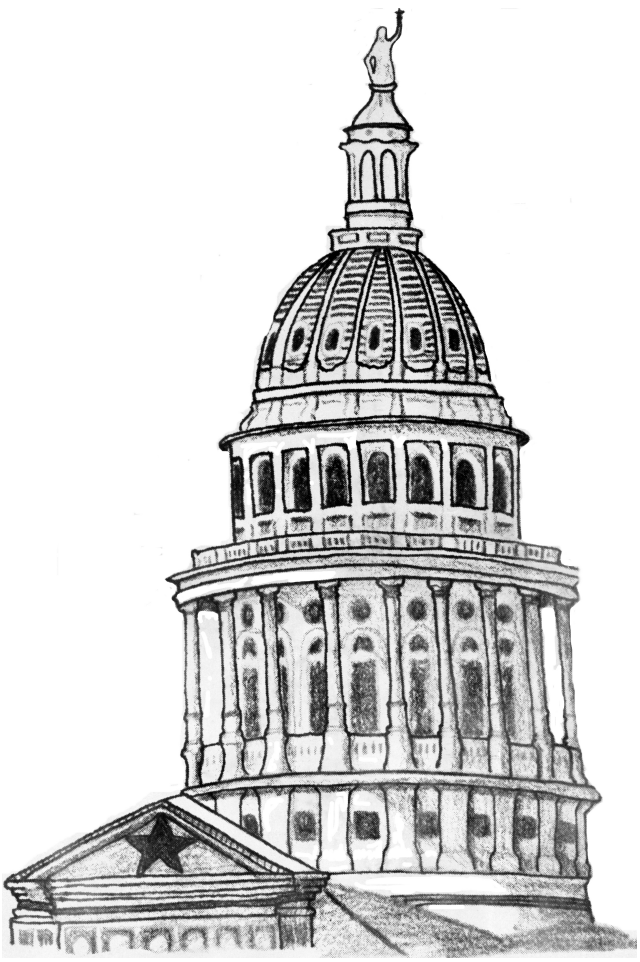

THE ATTORNEY GENERAL

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.)

Opinions

Opinion No. KP-0389

Mr. Tony Sims

Chambers County Auditor

Post Office Box 910

Anahuac, Texas 77514

Re: Authority of a conservation district to change the directors' terms of office from two to four years (RQ-0407-KP)

S U M M A R Y

While the 1949 special law creating the Trinity Bay Conservation District established a board of directors for the District with members having two-year terms, the subsequently enacted section 49.103 of the Water Code provides for the members of the board of certain districts, including the Trinity Bay Conservation District, to serve staggered four-year terms.

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

TRD-202104417
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: November 2, 2021

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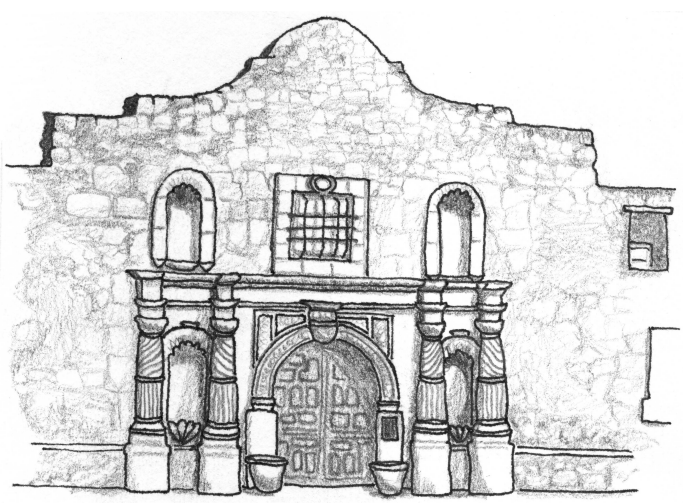

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law,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

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 448. STANDARD OF CARE

SUBCHAPTER I. TREATMENT PROGRAM SERVICES

25 TAC §448.911

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 25 Texas Administrative Code, Chapter 448, Standard of Care, an amendment to §448.911, concerning an emergency rule in response to COVID-19 to expand a licensed chemical dependency treatment facility's ability to provide treatment services through electronic means to adults and adolescents to reduce the risk of COVID-19 transmission. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule amendment to §448.911(a)(1) to temporarily permit a currently licensed chemical dependency treatment facility (CDTF) to provide treatment services through electronic means to both adult and adolescent clients. This emergency rule amendment will reduce the risk of COVID-19 transmission and expand access to treatment for clients.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §464.009. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §464.009 authorizes the Executive Commissioner of HHSC to adopt rules governing organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed CDTFs.

The emergency rule amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 464.

§448.911. Treatment Services Provided by Electronic Means.

(a) A licensed treatment program may provide outpatient chemical dependency treatment program services by electronic means provided the criteria outlined in this section are addressed.

(1) Services may [~~shall~~] be provided to adult and adolescent clients [~~only~~]; and

(2) (No change.)

(b) - (x) (No change.)

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 October 27, 2021.

TRD-202104330
Nycia Deal
Attorney
Department of State Health Services
Effective date: November 3, 2021
Expiration date: March 2, 2022
For further information, please call: (512) 834-4591

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TEXAS
Lone Star State

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

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

TITLE 1. ADMINISTRATION

PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 176. METHODS FOR THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE

1 TAC §176.2, §176.3

The Texas Judicial Council (the Council) proposes the adoption of new §176.2, regarding the voluntary certification of county clerks to use remote technology to receive applications for marriage licenses from, and to issue marriage licenses to, persons who are not in the physical presence of the county clerk. The Council also proposes the adoption of new §176.3, which establishes acceptable procedures for the clerk to verify the identity and age of applicants for marriage licenses. The proposed rules implement Senate Bill 907, 87th Legislature, Regular Session (2021), which requires the Council to adopt by rule a process for county clerks to become certified by the Office of Court Administration (OCA) to issue marriage licenses through the use of remote technology. The new law also requires the Council to adopt rules to ensure sufficient verification of applicants' age and identity.

Fiscal Note

Jennifer Henry, chief financial officer of the OCA, has determined that for each year of the first five-year period the rules are in effect, there will be no significant fiscal implication for the state or for local governments.

Public Benefit and Economic Impact

Jeffrey Tsunekawa, director of research and court services with OCA, has determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of the rules will be to specify guidelines for county clerks to issue marriage licenses through remote technology in a manner which ensures sufficient confirmation of the age and identity of applicants to prevent fraud.

Local Employment and Government Growth Impact Statement

Mr. Tsunekawa has also determined that a local employment impact statement for the proposed rules is not required because there will be no impact to the local economy for each year of the first five years the rules are in effect. Mr. Tsunekawa has also determined that the new rules do not: 1) create or eliminate government programs or employee positions; 2) require an increase or decrease in future legislative appropriations or fees paid to the agency; and 3) positively or adversely affect the state's economy. The new rules allow for, but do not mandate, certification to carry out a pre-existing program in a new way.

Economic Impact Statement and Regulatory Flexibility Analysis

OCA has determined that the proposed rules will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), a regulatory flexibility analysis is not required.

Takings Impact Assessment

OCA has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

Comments

Comments on the proposal may be submitted to Jeffrey Tsunekawa at Jeffrey.Tsunekawa@txcourts.gov, at P.O. Box 12066, Austin, Texas 78711-2066, or at fax number (512) 463-1648.

Statutory Authority

The rules are proposed under Government Code §71.039, which requires the Council to adopt rules to implement a process for county clerks to voluntarily become certified by OCA to issue marriage licenses through remote technology. The process must include procedures for the sufficient verification of the age and identity of each applicant for a marriage license.

No other statutes, articles, or codes are affected by these sections.

§176.2. Voluntary Certification for Remote Issuance of Marriage Licenses.

(a) A county clerk may apply for certification from the Office of Court Administration to use remote technology to receive applications for marriage licenses from, and to issue marriage licenses to, persons who are not in the county clerk's presence.

(b) The Office of Court Administration must certify a county clerk to issue marriage licenses remotely upon determining the county clerk's office has fulfilled the following requirements:

(1) the office of the county clerk must post in a prominent location on its website notice to the public of:

(A) contact information to schedule a meeting through remote technology to apply for a marriage license;

(B) a copy of the marriage license application form required by Section 2.004 of the Family Code; and

(C) notice of the list of acceptable forms of proof of an applicant's identity and age specified in Section 2.005 of the Family Code; and

(2) the office of the county clerk must have access to:

(A) remote technology, such as a video teleconferencing system or other service which provides simultaneous, compressed full motion video and interactive communication of image and sound between the clerk, the applicant, an adult person who appears on behalf of an absent applicant in accordance with Section 2.005 of the Family Code, or any other person necessary to process the application; and

(B) a method of electronically sending and receiving documents related to the issuance of a marriage license.

(c) A person who appears before a certified county clerk through a video teleconferencing system or other remote technology fulfills the requirement of Section 2.002(1) of the Family Code.

§176.3. Verification of Age and Identity of Applicant for a Marriage License.

(a) A county clerk may verify the age and identity or proof of the removal of disability of minority of an applicant who appears before the clerk through remote technology by:

(1) examining upon presentation via remote video any acceptable forms of proof of age and identity listed in Section 2.005 of the Family Code and, if applicable, the court order described in Section 2.003 of the Family Code;

(2) examining a copy of any acceptable forms of proof of age and identity listed in Section 2.005 of the Family Code and, if applicable, the court order described in Section 2.003 of the Family Code which are electronically transmitted to the clerk;

(3) witnessing an oath by a notary who is in the applicant's presence verifying the authenticity of the applicant's proof of age and identity and, if applicable, a court order described in Section 2.003 of the Family Code; or

(4) upon receipt of an affidavit of a notary swearing to the age, identity, and, if applicable, legal capacity of the applicant.

(b) A county clerk who has a reasonable basis to question the authenticity of any documentation offered to establish an applicant's age and identity may decline to issue the license through remote technology.

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 October 29, 2021.

TRD-202104369
Maria Elena Ramon
General Counsel
Texas Judicial Council
Earliest possible date of adoption: December 12, 2021
For further information, please call: (512) 936-7553

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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. GENERAL ADMINISTRATION

1 TAC §201.4

The Texas Department of Information Resources (the department) proposes amendments to 1 Texas Administrative Code Chapter 201, §201.4, concerning Board Policies, to adopt rules prescribing procedures related to the operation of the department family leave pool. This is in response to the passage of House Bill 2063 [87th Session (Regular)], which requires a governing board establish rules and prescribe procedures related to the operation of the family leave pool codified at Texas Government Code Chapter 661, Subchapter A-1.

The department proposes to amend the current text of 1 Texas Administrative Code §201.4, to establish rules delegating authority for the creation of procedures relating to the regular operation of the department family leave pool to the department's executive director and tasks the executive director or a designee under their supervision as the family leave pool administrator. The proposed amendment further updates the rule numbering in compliance with *Texas Register* requirements.

The proposed amendment applies exclusively to the department. Neither the current rule nor the proposed amendment has an impact on state agencies or institution of higher education.

There is no economic impact on rural communities or small businesses as a result of enforcing or administering the amended rule as proposed.

Katherine Fite, General Counsel, has determined that during the first five-year period following the amendments to 1 TAC Chapter 201, there will be no fiscal impact on state agencies, institutions of higher education, and local governments. This rule applies exclusively to the department and simply establishes administrative protocol to administer the legislatively created and statutorily mandated family leave pool; as a result, there is no fiscal impact. Ms. Fite has further determined that for each year of the first five years following the adoption of the amendments to 1 TAC Chapter 201 there are no anticipated additional economic costs to persons or small businesses required to comply with the amended rules.

Pursuant to Government Code § 2001.0221, the agency provides the following Governmental Growth Impact Statement for the proposed amendment. The agency has determined the following:

1. The proposed rule establishes the procedures of the department's family leave pool. This pool was created by statute; the department is tasked with adopting rules and prescribe procedures relating to the operation of the pool. The proposed rules do not eliminate a government program.

2. Implementation of the proposed rule does not require the creation or elimination of employee positions. There are no additional employees required nor employees eliminated to implement the rule as amended.

3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency. There is no fiscal impact as implementing the rule does not require an increase or decrease in future legislative appropriations.

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

5. The proposed rule creates a new rule governing the family leave pool at the direction of Texas Government Code § 661.022(c).

6. The proposed rules do not 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 the state's economy.

Written comments on the proposed rules may be submitted to Christi Koenig Brisky, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to rules.review@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054, and Texas Government Code § 661.022(c).

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

§201.4. Board Policies.

(a) The executive director is hereby delegated authority by the board to grant a requesting state agency a compliance waiver from administrative rule, statewide standards, or other board policies. A state agency may request a compliance waiver from administrative rule, statewide standards or other board policy. The agency must clearly demonstrate to the department through written justification any performance or cost advantages to be gained and that the overall economic interests of the state are best served by granting the compliance waiver. The executive director of the department will notify the board when requests for waivers are received.

(b) The executive director is hereby delegated authority by the board to establish a sick leave pool program for employees of the department. The program must be consistent with the requirements of state law regarding state employee sick leave pools. The executive director is hereby appointed as the sick leave pool administrator. The executive director may designate another employee of the department to serve as the pool administrator under the supervision of the executive director. The pool administrator shall prescribe procedures relating to the operation of the sick leave pool program.

(c) The executive director is hereby delegated authority by the board to establish a family leave pool program for employees of the department and prescribe procedures relating to the operation of the family leave pool program. The executive director is hereby designated as the family leave pool administrator but may designate another employee of the department to serve as the pool administrator under the supervision of the executive director.

(d) [~~(c)~~] In compliance with Chapter 2255, Texas Government Code, this subsection establishes the criteria, procedures and standards of conduct governing the relationship between the department and its officers and employees and private donors. This subsection authorizes the department to accept gifts and donations the department determines it is in the public interest to accept as a result of an emergency, including both natural and manmade disasters. The department is authorized to accept gifts and donations the department determines it is in the public interest to accept as a result of technology benefit including education, assessment or innovation.

(1) A private donor may make donations, including gifts, to the department to be spent or used for public purposes during times of emergency, including times of manmade and natural disasters or for any public purpose related to the duties of the department. Use by the department of the donation must be consistent with the mission and duties of the department. If the donor specifies the purpose for which the donation may be spent, the department must expend the donation only for that purpose.

(2) Monetary donations must be spent in accordance with the State Appropriations Act and shall be deposited in the state treasury unless statutorily exempted.

(3) The executive director is hereby delegated authority to coordinate all donations and may accept donations that do not exceed $250,000 in value on behalf of the department. Each donation accepted by the executive director must be acknowledged by the board at the board meeting following acceptance of the donation by the department. Donations that exceed $250,000 in value must be approved by the board prior to acceptance.

(4) Acceptance of the donation by either the board or the executive director of the department must be recorded in the board minutes, together with the name of the donor, description of the donation and a statement of the purpose of the donation.

(5) Donations may be accepted only if the executive director or board, as applicable, determines the donation will further the department's mission or duties, provide significant public benefit and not influence or reasonably appear to influence, the department in the performance of its duties.

(6) Execution of a donation agreement is required if the value of the donation exceeds $10,000 or if a written agreement is necessary, in the opinion of the department, to:

(A) indemnify the department as to ownership;

(B) prevent potential claims that could result from use of the donation, including access to confidential information;

(C) document donation terms or conditions;

(D) describe how the donation will further the department's mission or duties, provides a significant public benefit and is not made in an effort to influence action on the part of the department; or

(E) delete any information on a device donated to the department.

(7) Each donation agreement must include:

(A) a description of the donation, including a determination of its value;

(B) donor attestation of ownership rights in the donation;

(C) any restrictions or terms of use of the donation imposed by the donor;

(D) contact information for the donor;

(E) a statement that the department takes no position regarding and is not responsible for any tax-related representations by the donor and all value determinations are the responsibility of the donor and do not constitute affirmation of that value by the department.; and

(F) the signature of the executive director and the donor or an authorized representative of the donor if it is an entity rather than an individual.

(e) [~~(d)~~] The board shall set a strategic direction for the department by:

(1) establishing a subcommittee for each major program area to monitor activities, major outsourced contracts, and new initiatives for and service offerings by the department;

(2) evaluating and approving new initiatives for, or categories of, services offered by the department under the department's various programs.

(f) [~~(e)~~] The board shall regularly evaluate the extent to which the department fulfills the department's information resources technology mission by providing cost-effective services and meeting customer needs.

(g) [~~(f)~~] The board shall regularly evaluate department operations, including an evaluation of analytical data and information regarding trends in department revenue and expenses, as well as performance information.

(h) [~~(g)~~] The board shall maintain an audit subcommittee of the board. The subcommittee shall oversee the department's internal auditor and any other audit issues that the board considers appropriate. The subcommittee shall evaluate whether the internal auditor has sufficient resources to perform the auditor's duties and ensure that sufficient resources are available.

(i) [~~(h)~~] A department employee may not:

(1) have an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by the department; or

(2) in any manner, including by rebate or gift, directly or indirectly accept or receive from a person to whom a contract may be awarded anything of value or a promise, obligation, or contract for future reward or compensation.

(3) Each state agency employee or official who is involved in procurement or in contract management for a state agency shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.

(4) A department employee who violates paragraph (1), (2), or (3) of this subsection is subject to disciplinary action, including dismissal.

(5) The department shall train staff in the requirements of this subsection and Government Code, Chapter 572, and incorporate the requirements into the contract management guide and the department's internal policies, including employee manuals.

(j) [~~(i)~~] The department will not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following department employees or officials have a financial interest:

(1) a member of the board;

(2) the executive director, general counsel, chief procurement officer, or procurement director of the department; or

(3) a family member related to an employee or official described by paragraph (1) or (2) of this subsection within the second degree by affinity or consanguinity.

(k) [~~(j)~~] A department employee or official has a financial interest in a person if the employee or official:

(1) owns or controls, directly or indirectly, an ownership interest of at least one percent in the person, including the right to share in profits, proceeds, or capital gains; or

(2) could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.

(l) [~~(k)~~] A financial interest prohibited by this section does not include a retirement plan not under direct control of a department employee or official (e.g. mutual funds), a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation.

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 October 28, 2021.

TRD-202104344
Katherine Rozier Fite
General Counsel
Department of Information Resources
Earliest possible date of adoption: December 12, 2021
For further information, please call: (512) 475-4552

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §24.3

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §24.3, relating to definitions of terms for Chapter 24, and §25.5, relating to definitions for Chapter 25. The purpose of these proposed changes is to revise definitions to comport with changes made in legislation passed in the 87th Legislature Session (Regular Session) as well as make other minor changes.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed amendments 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 amendments will not create a government program and will not eliminate a government program;

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

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

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

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

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

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

(8) the proposed amendments will have no impact on 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 amendments. 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 amendments 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

David Smeltzer, Director, Rules and Projects Division, has determined that, for the first five-year period the proposed amendments are 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. Smeltzer has also determined that, for each year of the first five years the proposed amendments are in effect, the anticipated public benefit expected as a result of the adoption of the proposed amendments will be alignment of commission rules with the statute. Mr. Smeltzer has determined that there are no economic costs required to comply with the proposed rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed amendments are 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 if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by November 18, 2021.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by November 18, 2021. Comments should be organized in a manner consistent with the organization of the proposed rule. 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 52313.

Statutory Authority

The amendments to the rules are proposed under the following provision of the Public Utility Regulatory Act (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; §31.002(4-b), which defines an electric generation equipment lessor or operator, §31.002(6), which exempts from the definition of "electric utility" an electric generation equipment lessor or operator; §37.001(3), which exempts from the definition of "retail electric utility" an electric generation equipment lessor or operator; §31.002(6)(J)(iv), which exempts from the definition of "electric utility" a person that owns or operates equipment used solely for consumption by an alternatively fueled vehicle, as defined by Section 502.004, Transportation Code; and, §37.002, which permits the commission by rule to exempt from the definition of "retail electric utility" under Section 37.001 a provider who owns or operates equipment used solely to provide electricity charging service for a mode of transportation.

Cross reference to statutes: PURA §14.001, §14.002, §31.002(4-b), §31.002(6), §37.001(3), §31.002(6)(J)(iv) and §37.002.

§24.3. Definitions of Terms.

In this chapter, the following definitions apply [~~The following words and terms, when used in this chapter, have the following meanings,~~] unless the context clearly indicates otherwise.

(1) Affected county--A county that: [~~to which Local Government Code, Chapter 232, Subchapter B, applies.~~]

(A) Has a per-capita income that averaged 25% below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25% above the state average for the most recent three consecutive years for which statistics are available;

(B) Has an international border;

(C) Is located in whole or in part within 100 miles of an international border and contains a majority of the area of a municipality with a population of more than 250,000; or

(D) Has an economically distressed area which has a median household income that is not greater than 75% of the median state household income.

(2) Affected person--Any landowner within an area for which a certificate of public convenience and necessity is filed, any retail public utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

(3) Affiliated interest or affiliate--

(A) any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of a utility;

(C) any corporation owning or holding 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation owning or holding 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5.0% or more of the voting securities of any utility or by any

person or corporation in any chain of successive ownership of 5.0% of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of a public utility;

(F) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(4) Billing period--The period between meter-reading [~~meter reading~~] dates for which a bill is issued or, if usage is not metered, the period between bill issuance dates.

(5) Class A Utility--A public utility that provides retail water or sewer utility service to 10,000 or more taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(6) Class B Utility--A public utility that provides retail water or sewer utility service to 2,300 or more taps or active connections but fewer than 10,000 taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(7) Class C Utility--A public utility that provides retail water or sewer utility service to 500 or more taps or active connections but fewer than 2,300 taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(8) Class D Utility--A public utility that provides retail water or sewer utility service to fewer than 500 taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(9) Commission--The Public Utility Commission of Texas.

(10) Corporation--Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but does not include municipal corporations unless expressly provided in TWC chapter [~~Chapter~~] 13.

(11) Customer--Any entity that purchases [~~person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with~~] services from a [~~by any~~] retail public utility.

(12) Customer class--A group of customers with similar cost-of-service characteristics that take utility service under a single set of rates.

(13) Customer service line--The pipe connecting the water meter to the customer's point of use [~~consumption~~] or the pipe that conveys sewage from the customer's premises to the service provider's service line.

(14) District--District has the meaning assigned to it by TWC §49.001(a).

(15) Facilities--All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

(16) Inactive connection--A water or wastewater connection is considered to be inactive when the ability to provide water or wastewater service is either physically removed or permanently closed [~~that is not currently receiving service from a retail public utility~~].

(17) Incident of tenancy--Water or sewer service provided to tenants of rental property [~~,~~] for which no separate or additional service fee is charged other than the rental payment.

(18) Landowner--An owner or owners of a tract of land [~~, including multiple owners of a single deeded tract of land, as shown on the appraisal roll of the appraisal district established for each county in which the property is located~~].

(19) Member--A person who holds a membership in a water supply or sewer service corporation and who is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

(20) Minimum Monthly Charge--The fixed amount billed to a customer each month even if the customer uses no water or wastewater.

(21) Municipality--Cities [~~existing, created, or~~] organized under the general, home rule, or special laws of this state.

(22) Municipally owned utility--Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(23) Nonfunctioning system or utility--A system that is operating as a retail public utility and:

(A) is required to have a CCN and is operating without a CCN; or

(B) is under supervision in accordance with §24.353 of this title (relating to Supervision of Certain Utilities); or

(C) is under the supervision of a receiver, temporary manager, or has been referred for the appointment of a temporary manager or receiver, in accordance with §24.355 of this title (relating to Operation of Utility that Discontinues Operation or Is Referred for Appointment of a Receiver) and §24.357 of this title (relating to Operation of a Utility by a Temporary Manager).

(24) Person--Natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations.

(25) Point of use--The primary service connection point where water is used or sewage is generated.

(26) Potable water--Water that is suitable for drinking [~~used for or intended to be used for human consumption or household use~~].

(27) Potential connections--Total number of active plus inactive connections.

(28) Premises--A tract of land or real estate including buildings and other appurtenances thereon.

(29) Rate--Every compensation, tariff, charge, fare, toll, rental, and classification or any of those items demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, for any service, product, or commodity described in TWC §13.002(23), and any rules, regulations, practices, or contracts affecting that compensation, tariff, charge, fare, toll, rental, or classification.

(30) Requested area--The area that a petitioner or applicant seeks to obtain, add to, or remove from a retail public utility's certificated service area.

(31) Retail public utility--Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(32) Retail water or sewer utility service--Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

(33) Service--Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under TWC chapter [~~Chapter~~] 13 to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

(34) Service area--Area to which a retail public utility is obligated to provide retail water or sewer utility service.

(35) Stand-by fee--A charge, other than a tax, imposed on undeveloped property:

(A) with no water or wastewater connections; and

(B) for which water, sanitary sewer, or drainage facilities and services are available; water supply, wastewater treatment plant capacity, or drainage capacity sufficient to serve the property is available; or major water supply lines, wastewater collection lines, or drainage facilities with capacity sufficient to serve the property are available.

[~~(36) Temporary rate for services provided for a nonfunctioning system--A rate charged under TWC §13.046 to the customers of a nonfunctioning system by a retail public utility that takes over the provision of service for a nonfunctioning retail public water or sewer system or utility service provider.~~]

(36) [~~(37)~~] Test year--The most recent 12-month period [~~,~~] beginning on the first day of a calendar- or fiscal-year quarter [~~calendar or fiscal year quarter;~~] for which operating data for a retail public utility are available.

(37) [~~(38)~~] Tract of land--An area of land that has common ownership and is not severed by other land under different ownership, whether owned by government entities or private parties; such other land includes roads and railroads. A tract of land may be acquired through multiple deeds or shown in separate surveys.

(38) [~~(39)~~] Water and sewer utility, utility, or public utility--Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(39) [~~(40)~~] Water supply or sewer service corporation--Any nonprofit corporation organized and operating under TWC chapter 67, that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with bylaws or articles of incorporation which ensure that it is member-owned and member-controlled. The term does not include a corporation that provides retail water or sewer utility service to a person who is not a member, except that the corporation may provide retail water or sewer utility service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold.

(40) [~~(41)~~] Water use restrictions--Restrictions implemented to reduce the amount of water that may be consumed by customers of the utility due to emergency conditions or drought.

(41) [~~(42)~~] Wholesale water or sewer service--Potable water service or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the 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 November 1, 2021.

TRD-202104384
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: December 12, 2021
For further information, please call: (512) 936-7244

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §25.5

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.5, relating to definitions for Chapter 25. The purpose of these proposed changes is to revise definitions to comport with changes made in legislation passed in the 87th Legislature Session (Regular Session) as well as make other minor changes.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed amendments 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 amendments will not create a government program and will not eliminate a government program;

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

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

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

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

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

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

(8) the proposed amendments will have no impact on 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 amendments. 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 amendments 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

David Smeltzer, Director, Rules and Projects Division, has determined that, for the first five-year period the proposed amendments are 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. Smeltzer has also determined that, for each year of the first five years the proposed amendments are in effect, the anticipated public benefit expected as a result of the adoption of the proposed amendments will be alignment of commission rules with the statute. Mr. Smeltzer has determined that there are no economic costs required to comply with the proposed rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed amendments are 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 if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by November 18, 2021.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by November 18, 2021. Comments should be organized in a manner consistent with the organization of the proposed rule. 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 52313.

Statutory Authority

The amendments to the rules are proposed under the following provision of the Public Utility Regulatory Act (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; §31.002(4-b), which defines an electric generation equipment lessor or operator, §31.002(6), which exempts from the definition of "electric utility" an electric generation equipment lessor or operator; §37.001(3), which exempts from the definition of "retail electric utility" an electric generation equipment lessor or operator; §31.002(6)(J)(iv), which exempts from the definition of "electric utility" a person that owns or operates equipment used solely for consumption by an alternatively fueled vehicle, as defined by Section 502.004, Transportation Code; and §37.002, which permits the commission by rule to exempt from the definition of "retail electric utility" under Section 37.001 a provider who owns or operates equipment used solely to provide electricity charging service for a mode of transportation.

Cross reference to statutes: PURA §14.001, §14.002, §31.002(4-b), §31.002(6), §37.001(3), §31.002(6)(J)(iv), and §37.002.

§25.5. Definitions.

In this chapter, the following definitions apply [~~The following words and terms, when used in this chapter, shall have the following meanings,~~] unless the context [~~clearly~~] indicates otherwise:

(1) Above-market purchased power costs--Wholesale demand and energy costs that a utility is obligated to pay under an existing purchased power contract to the extent the costs are greater than the purchased power market value.

(2) Affected person--means:

(A) a public utility or electric cooperative affected by an action of a regulatory authority;

(B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or

(C) a person who:

(i) is a competitor of a public utility with respect to a service performed by the utility; or

(ii) wants to enter into competition with a public utility.

(3) Affiliate--means:

(A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;

(B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;

(C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;

(D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:

(i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or

(ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;

(E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of a public utility; or

(F) a person determined to be an affiliate under Public Utility Regulatory Act (PURA) §11.006.

(4) Affiliated electric utility--The electric utility from which an affiliated retail electric provider was unbundled in accordance with PURA [~~Public Utility Regulatory Act~~] §39.051.

(5) Affiliated power generation company (APGC)--A power generation company that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(6) Affiliated retail electric provider (AREP)--A retail electric provider that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(7) Aggregation--Includes the following:

(A) the purchase of electricity from a retail electric provider, a municipally owned utility, or an electric cooperative by an electricity customer for its own use in multiple locations, provided that an electricity customer may not avoid any non-bypassable charges or fees as a result of aggregating its load; or

(B) the purchase of electricity by an electricity customer as part of a voluntary association of electricity customers, provided that an electricity customer may not avoid any non-bypassable charges or fees as a result of aggregating its load.

(8) Aggregator--A person joining two or more customers, other than municipalities and political subdivision corporations, into a single purchasing unit to negotiate the purchase of electricity from retail electric providers. Aggregators may not sell or take title to electricity. Retail electric providers are not aggregators.

(9) Ancillary service--A service necessary to facilitate the transmission of electric energy including load following, standby power, backup power, reactive power, and any other services the commission may determine by rule.

(10) Base rate--Generally, a rate designed to recover the cost of service other than certain costs separately identified and recovered through a rider, rate schedule, or other schedule. For bundled utilities, these separately identified costs may include items such as a fuel factor, power cost recovery factor, and surcharge. Distribution service providers may have separately identified costs such as transition costs, the excess mitigation charge, transmission cost recovery factors, and the competition transition charge.

(11) Bundled Municipally Owned Utilities/Electric Cooperatives (MOU/COOP)--A municipally owned utility/electric cooperative that is conducting both transmission and distribution activities and competitive energy-related activities on a bundled basis without structural or functional separation of transmission and distribution functions from competitive energy-related activities and that makes a written declaration of its status as a bundled municipally owned utility/electric cooperative pursuant to §25.275(o)(3)(A) of this title (relating to Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities).

(12) Calendar year--January 1 through December 31.

(13) Commission--The Public Utility Commission of Texas.

(14) Competition transition charge (CTC)--Any non-bypassable charge that recovers the positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of PURA [~~the Public Utility Regulatory Act (PURA),~~] chapter 39 [~~Chapter 39~~]. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263. Competition transition charges also include the transition charges established pursuant to PURA §39.302(7) unless the context indicates otherwise.

(15) Competitive affiliate--An affiliate of a utility that provides services or sells products in a competitive energy-related market in this state, including telecommunications services, to the extent those services are energy-related.

(16) Competitive energy efficiency services--Energy efficiency services that are defined as competitive energy services under [~~pursuant to~~] §25.341 of this title (relating to Definitions).

(17) Competitive retailer--A retail electric provider; or a municipally owned utility or electric cooperative, that has the right to offer electric energy and related services at unregulated prices directly to retail customers who have customer choice, without regard to geographic location.

(18) Congestion zone--An area of the transmission network that is bounded by commercially significant transmission constraints or otherwise identified as a zone that is subject to transmission constraints, as defined by an independent organization.

(19) Control area--An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

(A) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

(B) maintain, within the limits of good utility practice, scheduled interchange with other control areas;

(C) maintain the frequency of the electric power system(s) within reasonable limits in accordance with good utility practice; and

(D) obtain sufficient generating capacity to maintain operating reserves in accordance with good utility practice.

(20) Corporation--A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver, or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation or electric cooperative, except as expressly provided by PURA [~~the Public Utility Regulatory Act~~].

(21) Critical loads--Loads for which electric service is considered crucial for the protection or maintenance of public health and safety; including but not limited to hospitals, police stations, fire stations, critical water and wastewater facilities, and customers with special in-house life-sustaining equipment.

(22) Customer choice--The freedom of a retail customer to purchase electric services, either individually or through voluntary aggregation with other retail customers, from the provider or providers of the customer's choice and to choose among various fuel types, energy efficiency programs, and renewable power suppliers.

(23) Customer class--A group of customers with similar electric-service [~~electric~~] characteristics (e.g., residential, commercial, industrial, sales for resale) taking service under one or more rate schedules. Qualified businesses as defined by the Texas Enterprise Zone Act, Texas Government Code, title 10 [~~Title 10~~], chapter 2303 [~~Chapter 2303~~] may be considered to be a separate customer class of electric utilities.

(24) Day-ahead--The day preceding the operating day.

(25) Deemed savings--A pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application that a utility may use instead of energy and peak demand savings determined through measurement and verification activities.

(26) Demand--The rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

(27) Demand savings--A quantifiable reduction in the rate at which energy is delivered to or by a system at a given instance, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

(28) Demand-side management (DSM)--Activities that affect the magnitude or timing of customer electrical usage, or both.

(29) Demand-side resource or demand-side management--Equipment, materials, and activities that result in reductions in electric generation, transmission, or distribution capacity needs or reductions in energy usage or both.

(30) Disconnection of service--Interruption of a customer's supply of electric service at the customer's point of delivery by an electric utility, a transmission and distribution utility, a municipally owned utility or an electric cooperative.

(31) Distribution line--A power line operated below 60,000 volts, when measured phase-to-phase, that is owned by an electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative.

(32) Distributed resource--A generation, energy storage, or targeted demand-side resource, generally between one kilowatt and ten megawatts, located at a customer's site or near a load center, which may be connected at the distribution voltage level (below 60,000 volts), that provides advantages to the system, such as deferring the need for upgrading local distribution facilities.

(33) Distribution service provider (DSP)--An electric utility, municipally-owned utility, or electric cooperative that owns or operates for compensation in this state equipment or facilities that are used for the distribution of electricity to retail customers [~~, as defined in this section,~~] including retail customers served at transmission voltage levels.

(34) Economically distressed geographic area--Zip-code [~~Zip code~~] area in which the average household income is less than or equal to 60% of the statewide median income [~~,~~] as reported in the most recently available United States Census data.

(35) Electric cooperative--

(A) a corporation organized under the Texas Utilities Code, Chapter 161 or a predecessor statute to Chapter 161 and operating under that chapter;

(B) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas; or

(C) a successor to an electric cooperative created before June 1, 1999, in accordance with a conversion plan approved by a vote of the members of the electric cooperative, regardless of whether the successor later purchases, acquires, merges with, or consolidates with other electric cooperatives.

(36) Electric generating facility--A facility that generates electric energy for compensation and that is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority.

(37) Electricity facts label [~~Facts Label~~]--Information in a standardized format, as described in §25.475(f) of this title (relating to Information Disclosures to Residential and Small Commercial Customers), that summarizes the price, contract terms, fuel sources, and environmental impact associated with an electricity product.

(38) Electricity product--A specific type of retail electricity service developed and identified by a REP, the specific terms and conditions of which are summarized in an electricity facts label [~~Electricity Facts Label~~] that is specific to that electricity product.

(39) Electric Reliability Council of Texas (ERCOT)--Refers to the independent organization and, in a geographic sense, refers to the area served by electric utilities, municipally owned utilities, and electric cooperatives that are not synchronously interconnected with electric utilities outside of the State of Texas.

(40) Electric service identifier (ESI ID)--The basic identifier assigned to each point of delivery used in the registration system and settlement system managed by ERCOT [~~the Electric Reliability Council of Texas (ERCOT)~~] or another independent organization.

(41) Electric utility--Except as otherwise provided in this chapter [~~Chapter~~], an electric utility is: A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas Utilities Code, subchapter C [~~Subchapter C~~], chapter 184

[~~Chapter~~ 184], with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

(A) a municipal corporation;

(B) a qualifying facility;

(C) a power generation company;

(D) an exempt wholesale generator;

(E) a power marketer;

(F) a corporation described by PURA [~~Public Utility Regulatory Act~~] §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;

(G) an electric cooperative;

(H) a retail electric provider;

(I) the state of Texas or an agency of the state; or

(J) a person not otherwise an electric utility who:

(i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; [~~or~~]

(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, subchapter C [~~Subchapter C~~], chapter 184 [~~Chapter 184~~]; [.]

(iv) is an electric generation equipment lessor or operator; or

(v) owns or operates in this state equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle, as defined by section 502.004 of the Transportation Code.

(42) Energy efficiency--Programs that are aimed at reducing the rate at which electric energy is used by equipment or [~~and/or~~] processes. Reduction in the rate of energy used may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adoption of technologies and processes that reduce heat or other energy losses; or reorganization of processes to make use of waste heat. Efficient use of energy by customer-owned end-use devices implies that existing comfort levels, convenience, and productivity are maintained or improved at a lower customer cost.

(43) Energy efficiency measures--Equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable reduction in either purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kW, or both.

(44) Energy efficiency project--An energy efficiency measure or combination of measures installed under a standard offer contract or a market transformation contract that results in both a reduction in customers' electric energy consumption and peak demand, and energy costs.

(45) Energy efficiency service provider (EESP)--A person who installs energy efficiency measures or performs other energy efficiency services. An energy efficiency service provider may be a retail electric provider or large commercial customer, if the person has executed a standard offer contract.

(46) Energy savings--A quantifiable reduction in a customer's consumption of energy.

(47) ERCOT protocols--Body of procedures developed by ERCOT to maintain the reliability of the regional electric network and account for the production and delivery of electricity among resources and market participants [~~The procedures, initially approved by the commission, include a revisions process that may be appealed to the commission, and are subject to the oversight and review of the commission~~].

(48) ERCOT region--The geographic area under the jurisdiction of the commission that is served by transmission service providers that are not synchronously interconnected with transmission service providers outside of the state of Texas.

(49) Exempt wholesale generator--A person who is engaged directly or indirectly through one or more affiliates exclusively in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale who does not own a facility for the transmission of electricity, other than an essential interconnecting transmission facility necessary to effect a sale of electric energy at wholesale[~~, and who is in compliance with the registration requirements of §25.109 of this title (Registration of Power Generation Companies and Self-Generators)~~].

(50) Existing purchased power contract--A purchased power contract in effect on January 1, 1999, including any amendments and revisions to that contract resulting from litigation initiated before January 1, 1999.

(51) Facilities--All the plant and equipment of an electric utility, including all tangible and intangible property, without limitation, owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of an electric utility.

(52) Financing order--An order of the commission adopted under PURA [~~the Public Utility Regulatory Act~~] §39.201 or §39.262 approving the issuance of transition bonds and the creation of transition charges for the recovery of qualified costs.

(53) Freeze period--The period beginning on January 1, 1999, and ending on December 31, 2001.

(54) Generation assets--All assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, water contracts, lands, surface or subsurface water rights, emissions-related allowances, and gas pipeline interconnections.

(55) Generation service--The production and purchase of electricity for retail customers and the production, purchase, and sale of electricity in the wholesale power market.

(56) Good utility practice--Any of the practices, methods, or [~~and~~] acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, or [~~and~~] acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.

(57) Hearing--Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

(58) Independent organization--An independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller.

(59) Independent system operator--An entity supervising the collective transmission facilities of a power region that is charged with non-discriminatory coordination of market transactions, systemwide transmission planning, and network reliability.

(60) Installed generation capacity--All potentially marketable electric generation capacity, including the capacity of:

(A) generating facilities that are connected with a transmission or distribution system;

(B) generating facilities used to generate electricity for consumption by the person owning or controlling the facility; and

(C) generating facilities that will be connected with a transmission or distribution system and operating within 12 months.

(61) Interconnection agreement--The standard form of agreement that [~~, which~~] has been approved by the commission. The interconnection agreement sets forth the contractual conditions under which a company and a customer agree that one or more facilities may be interconnected with the company's utility system.

(62) License--The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.

(63) Licensing--The commission process for granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(64) Load factor--The ratio of average load to peak load during a specific period of time, expressed as a percent. The load factor indicates to what degree energy has been consumed compared to maximum demand or utilization of units relative to total system capability.

(65) Low-income customer--An electric customer who receives assistance under the Supplemental Nutrition Assistance Program (SNAP) from Texas Health and Human Services Commission (HHSC) or medical assistance from a state agency administering a part of the medical assistance program.

(66) Low-Income List Administrator (LILA)--A third-party administrator contracted by the commission to administer aspects of the low-income customer identification process established under PURA §17.007.

(67) Market power mitigation plan--A written proposal by an electric utility or a power generation company for reducing its ownership and control of installed generation capacity as required by PURA [~~the Public Utility Regulatory Act~~] §39.154.

(68) Market value--For nonnuclear assets and certain nuclear assets, the value the assets would have if bought and sold in a bona fide third-party transaction or transactions on the open market under PURA [~~the Public Utility Regulatory Act (PURA)~~] §39.262(h) or, for certain nuclear assets, as described by PURA §39.262(i), the value determined under the method provided by that subsection.

(69) Master meter--A meter used to measure, for billing purposes, all electric usage of an apartment house or mobile home park, including common areas, common facilities, and dwelling units.

(70) Municipality--A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.

(71) Municipally-owned utility (MOU)--Any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(72) Nameplate rating--The full-load continuous rating of a generator under specified conditions as designated by the manufacturer.

(73) Native load customer--A wholesale or retail customer on whose behalf an electric utility, electric cooperative, or municipally-owned utility, by statute, franchise, regulatory requirement, or contract, has an obligation to construct and operate its system to meet in a reliable manner the electric needs of the customer.

(74) Natural gas energy credit (NGEC)--A tradable instrument representing each megawatt of new generating capacity fueled by natural gas, as authorized by PURA [~~the Public Utility Regulatory Act~~] §39.9044 and implemented under §25.172 of this title (relating to Goal for Natural Gas).

(75) Net book value--The original cost of an asset less accumulated depreciation.

(76) Net dependable capability--The maximum load in megawatts, net of station use, that [~~which~~] a generating unit or generating station can carry under specified conditions for a given period of time [~~,~~] without exceeding approved limits of temperature and stress.

(77) New on-site generation--Electric generation with capacity greater than ten megawatts capable of being lawfully delivered to the site without use of utility distribution or transmission facilities, which was not, on or before December 31, 1999, either:

(A) A fully operational facility; [~~,~~] or

(B) A project supported by substantially complete filings for all necessary site-specific environmental permits under the rules of the Texas Natural Resource Conservation Commission (TNRCC) in effect at the time of filing.

(78) Off-grid renewable generation--The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

(79) Other generation sources--A competitive retailer's or affiliated retail electric provider's supply of generated electricity that is not accounted for by a direct supply contract with an owner of generation assets.

(80) Person--Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative.

(81) Power cost recovery factor (PCRF)--A charge or credit that reflects an increase or decrease in purchased power costs not in base rates.

(82) Power generation company (PGC)--A person that:

(A) generates electricity that is intended to be sold at wholesale, including the owner or operator of electric energy storage equipment or facilities to which the Public Utility Regulatory Act, chapter 35 [~~Chapter 35~~], subchapter E [~~Subchapter E~~] applies;

(B) does not own a transmission or distribution facility in this state, other than an essential interconnecting facility, a facility

not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and

(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

(83) Power marketer--A person who becomes an owner of electric energy in this state for the purpose of selling the electric energy at wholesale; does not own generation, transmission, or distribution facilities in this state and [~~;~~] does not have a certificated service area [~~; and who is in compliance with the registration requirements of §25.105 of this title (relating to Registration and Reporting by Power Marketers)~~].

(84) Power region--A contiguous geographical area that [~~which~~] is a distinct region of the North American Electric Reliability Council.

(85) Pre-interconnection study--A study or studies that may be undertaken by a utility in response to its receipt of a completed application for interconnection and parallel operation with the utility system at distribution voltage. Pre-interconnection studies may include, but are not limited to, service studies, coordination studies, and utility system impact studies.

(86) Premises--A tract of land or real estate or related commonly used tracts including buildings and other appurtenances thereon.

(87) Price to beat (PTB)--A price for electricity, as determined under [~~pursuant to~~] PURA [~~the Public Utility Regulatory Act~~] §39.202, charged by an affiliated retail electric provider to eligible residential and small commercial customers in its service area.

(88) Proceeding--A hearing, investigation, inquiry, or other procedure for finding facts or making a decision, including adopting a rule or setting of a rate. The term includes a denial of relief or dismissal of a complaint [~~It may be rulemaking or nonrulemaking; rate setting or non-rate setting~~].

(89) Proprietary customer information--Any information obtained [~~compiled~~] by a retail electric provider, an electric utility, a transmission and distribution business unit as defined in §25.275(c)(16) of this title (relating to Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities) on a customer in the course of providing electric service or by an aggregator on a customer in the course of aggregating electric service that makes possible the identification of any individual customer by matching such information with the customer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any information that the customer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the customer to whom the information relates does not constitute proprietary customer information.

(90) Provider of last resort (POLR)--A retail electric provider (REP) certified in Texas that has been designated by the commission to provide a basic, standard retail service package in accordance with §25.43 of this title (relating to Provider of Last Resort (POLR)).

(91) Public retail customer--A retail customer that is an agency of this state, a state institution of higher education, a public school district, or a political subdivision of this state.

(92) Public utility or utility--An electric utility as that term is defined in this section, or a public utility or utility as those terms are defined in PURA [~~the Public Utility Regulatory Act~~] §51.002.

(93) Public Utility Regulatory Act (PURA)--The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 *et. seq.*

(94) Purchased power market value--The value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.

(95) Qualified scheduling entity--A market participant that is qualified by ERCOT [~~the Electric Reliability Council of Texas (ERCOT)~~] in accordance with section 16 [~~Section 16~~], Registration and Qualification of Market Participants of ERCOT's protocols [~~Protocols~~], to submit balanced schedules and ancillary services bids and settle payments with ERCOT.

(96) Qualifying cogenerator--As defined [~~The meaning as assigned this term~~] by 16 U.S.C. §796(18)(C). A qualifying cogenerator that provides electricity to the purchaser of the cogenerator's thermal output is not for that reason considered to be a retail electric provider or a power generation company.

(97) Qualifying facility--A qualifying cogenerator or qualifying small power producer.

(98) Qualifying small power producer--As defined [~~The meaning as assigned this term~~] by 16 U.S.C. §796(17)(D).

(99) Rate--A compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric utility for a service, product, or commodity described in the definition of electric utility in this section and a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification that must be approved by a regulatory authority.

(100) Rate class--A group of customers taking electric service under the same rate schedule.

(101) Rate year--The 12-month period beginning with the first date that rates become effective. The first date that rates become effective may include, but is not limited to, the effective date for bonded rates or the effective date for interim or temporary rates.

(102) Ratemaking proceeding--A proceeding in which a rate may be changed.

(103) Registration agent--Entity designated by the commission to administer registration and settlement, premise data, and other processes concerning a customer's choice of retail electric provider in the competitive electric market in Texas.

(104) Regulatory authority--In accordance with the context where it is found, either the commission or the governing body of a municipality.

(105) Renewable demand side management (DSM) technologies--Equipment that uses a renewable energy resource (renewable resource) as defined in this section, that, when installed at a customer site, reduces the customer's net purchases of energy (kWh), electrical demand (kW), or both.

(106) Renewable energy--Energy derived from renewable energy technologies.

(107) Renewable energy credit (REC)--A tradable instrument representing the generation attributes of one MWh of electricity from renewable energy sources, as authorized by the PURA [~~Public~~

~~Utility Regulatory Act~~] §39.904 and implemented under §25.173(e) of this title (relating to Goal for Renewable Energy).

(108) Renewable energy credit account (REC account)--An account maintained by the renewable energy credits trading program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs by a program participant.

(109) Renewable energy resource (renewable resource)--A resource that produces energy derived from renewable energy technologies.

(110) Renewable energy technology--Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable-energy [~~renewable energy~~] technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(111) Repowering--Modernizing or upgrading an existing facility in order to increase its capacity or efficiency.

(112) Residential customer--Retail customers classified as residential by the applicable bundled utility tariff, unbundled transmission and distribution utility tariff or, in the absence of classification under a residential rate class, those retail customers that are primarily end users consuming electricity at the customer's place of residence for personal, family or household purposes and who are not resellers of electricity.

(113) Retail customer--The separately metered end-use customer who purchases and ultimately consumes electricity.

(114) Retail electric provider (REP)--A person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets. The term does not include a person not otherwise a retail electric provider who owns or operates equipment used solely to provide electricity charging service for consumption.

(115) Retail electric provider (REP) of record--The REP assigned to the electric service identifier (ESI ID) in ERCOT's database. There can be no more than one REP of record assigned to an ESI ID at any specific point in time.

(116) Retail stranded costs--That part of net stranded cost associated with the provision of retail service.

(117) Retrofit--The installation of control technology on an electric generating facility to reduce the emissions of nitrogen oxide, sulfur dioxide, or both.

(118) River authority--A conservation and reclamation district created under [~~pursuant to~~] the Texas Constitution, article 16 [~~Article 16~~], section 59 [~~Section 59~~], including any nonprofit corporation created by such a district pursuant to the Texas Water Code, chapter 152 [~~Chapter 152~~], that is an electric utility.

(119) Rule--A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

(120) Separately metered--Metered by an individual meter that is used to measure electric energy consumption by a retail customer and for which the customer is directly billed by a utility, retail electric provider, electric cooperative, or municipally owned utility.

(121) Service--Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by an electric utility in the performance of its duties under PURA [~~the Public Utility Regulatory Act~~] to its patrons, employees, other public utilities or electric utilities, an electric cooperative, and the public. The term also includes the interchange of facilities between two or more public utilities or electric utilities.

(122) Spanish-speaking person--A person who speaks any dialect of the Spanish language exclusively or as their primary language.

(123) Standard meter--The minimum metering device necessary to obtain the billing determinants required by the transmission and distribution utility's tariff schedule to determine an end-use customer's charges for transmission and distribution service.

(124) Stranded cost--The positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above-market purchased-power [~~purchased power~~] costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effect of Certain Types of Regulation") for generation-related assets if required by the provisions of PURA [~~the Public Utility Regulatory Act (PURA),~~] Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263.

(125) Submetering--Metering of electricity consumption on the customer side of the point at which the electric utility measures [~~meters~~] electricity consumption for billing purposes.

(126) Summer net dependable capability--The net capability of a generating unit in megawatts (MW) for daily planning and operational purposes during the summer peak season, as determined in accordance with requirements of the reliability council or independent organization in which the unit operates.

(127) Supply-side resource--A resource, including a storage device, that provides electricity from fuels or renewable resources.

(128) System emergency--A condition on a utility's system that is likely to result in imminent, significant disruption of service to customers or is imminently likely to endanger life or property.

(129) Tariff--The schedule of a utility, municipally-owned utility, or electric cooperative containing all rates and charges stated separately by type of service, the rules and regulations of the utility, and any contracts that affect rates, charges, terms or conditions of service.

(130) Termination of service--The cancellation or expiration of a sales agreement or contract by a retail electric provider by notification to the customer and the registration agent.

(131) Tenant--A person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

(132) Test year--The most recent 12 months for which operating data for an electric utility, electric cooperative, or municipally-owned utility are available and shall commence with a calendar quarter or a fiscal year quarter.

(133) Texas jurisdictional installed generation capacity--The amount of an affiliated power generation company's installed generation capacity properly allocable to the Texas jurisdiction. Such allocation shall be calculated pursuant to an existing commission-approved allocation study, or other such commission-approved methodology, and may be adjusted as approved by the commission to reflect the effects of divestiture or the installation of new generation facilities.

(134) Transition bonds--Bonds, debentures, notes, certificates, of participation or of beneficial interest, or other evidences of indebtedness or ownership that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term not longer than 15 years, and that are secured or payable from transition property.

(135) Transition charges--Non-bypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in a financing order.

(136) Transmission and distribution business unit (TDBU)--The business unit of a municipally owned utility/electric cooperative, whether structurally unbundled as a separate legal entity or functionally unbundled as a division, that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity at retail, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of electric utility in a qualifying power region certified under PURA [~~the Public Utility Regulatory Act~~] §39.152. Transmission and distribution business unit does not include a municipally owned utility/electric cooperative that owns, controls, or is an affiliate of the transmission and distribution business unit if the transmission and distribution business unit is organized as a separate corporation or other legally distinct entity. Except as specifically authorized by statute, a transmission and distribution business unit shall not provide competitive energy-related activities.

(137) Transmission and distribution utility (TDU)--A person or river authority that owns, or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility", in a qualifying power region certified under PURA [~~the Public Utility Regulatory Act (PURA)~~] §39.152, but does not include a municipally owned utility or an electric cooperative. The TDU may be a single utility or may be separate transmission and distribution utilities.

(138) Transmission line--A power line that is operated at 60 kilovolts (kV) or above, when measured phase-to-phase.

(139) Transmission service--Service that allows a transmission service customer to use the transmission and distribution facilities of electric utilities, electric cooperatives and municipally owned utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver power to another transmission service customer. Includes construction or enlargement of facilities, transmission over distribution facilities, control area services, scheduling resources, regulation services, reactive power support, voltage control, provision of operating reserves, and any other associated electrical service the commission determines appropriate, except that, on and after the implementation of customer choice in any portion of the ERCOT [~~Electric Reliability Council of Texas (ERCOT)~~] region, control area services, scheduling resources, regulation services, provision of operating reserves, and reactive power support, voltage control and other services provided by generation resources are not ["] transmission service ["].

(140) Transmission service customer--A transmission service provider, distribution service provider, river authority, municipally-owned utility, electric cooperative, power generation company, retail electric provider, federal power marketing agency, exempt wholesale generator, qualifying facility, power marketer, or other person whom the commission has determined to be eligible to be a transmission service customer. A retail customer, as defined in this section, may not be a transmission service customer.

(141) Transmission service provider (TSP)--An electric utility, municipally-owned utility, or electric cooperative that owns or operates facilities used for the transmission of electricity.

(142) Transmission system--The transmission facilities at or above 60 kilovolts (kV) owned, controlled, operated, or supported by a transmission service provider or transmission service customer that are used to provide transmission 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 November 1, 2021.

TRD-202104386
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: December 12, 2021
For further information, please call: (512) 936-7244

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.16

The State Board of Dental Examiners (Board) proposes new rule 22 TAC §108.16, concerning teledentistry. The proposed rule pertains to standards for the provision of teledentistry dental services as set out in House Bill 2056 of the 87th Texas Legislature, Regular Session (2021), and Chapter 111, Texas Occupations Code.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

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

This proposed rule implements Chapter 111, Texas Occupations Code.

§108.16. Teledentistry.

(a) Purpose. Pursuant to Texas Occupations Code Chapter 111, and Texas Occupations Code §254.001(a), the Board is authorized to adopt rules relating to the practice of dentistry, including teledentistry dental services. This section establishes the standards of practice for teledentistry.

(b) Definition. "Teledentistry dental service" is defined in Texas Occupations Code §111.001(2-a).

(c) Prevention of Fraud and Abuse. Dentists who utilize teledentistry dental services must adopt protocols to prevent fraud and abuse through the use of teledentistry dental services.

(d) Complaints to the Board. Dentists who utilize teledentistry dental services must provide notice of how patients may file a complaint with the Board. Content and method of the notice must contain the same information as set out in §108.3(a)(2) - (3) of this title (relating to Consumer Information).

(e) Practice of Teledentistry.

(1) A dentist, dental hygienist, or dental assistant who delivers teledentistry services to a patient located in Texas must hold an active Texas license or registration issued by the Board.

(2) A dental health professional providing a dental health care service or procedure as a teledentistry dental service:

(A) is subject to the same standard of care that would apply to the provision of the same dental health care service or procedure in an in-person setting as established in §108.7 of this title (relating to Minimum Standard of Care, General);

(B) must establish a practitioner-patient relationship; and

(C) must maintain complete and accurate dental records as set out in §108.8 of this title (relating to Records of the Dentist).

(3) A dentist may simultaneously delegate to and supervise through a teledentistry dental service not more than five health professionals who are not dentists.

(4) Adequate measures must be implemented to ensure that patient communications, recordings and records are protected consistent with federal and state privacy laws.

(5) Any individual may provide any photography or digital imaging to a Texas licensed dentist or Texas licensed dental hygienist for the sole and limited purpose of screening, assessment, or examination.

(f) Informed Consent. In addition to the informed consent requirements in §108.7 and §108.8 of this title, informed consent must include the following:

(1) the delegating dentist's name, Texas license number, credentials, qualifications, contact information, and practice location involved in the patient's care. Additionally, the name, Texas license number, credentials, and qualifications of all dental hygienists and dental assistants involved in the patient's care. This information must be publicly displayed and provided in writing to the patient; and

(2) a dentist who delegates a teledentistry dental service must ensure that the informed consent of the patient includes disclosure to the patient that the dentist delegated the service.

(g) Issuance of Prescriptions.

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

(2) 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 teledentistry dental service.

(3) A valid prescription must be:

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

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

(4) Any prescription drug orders issued as the result of a teledentistry dental 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.

(h) Limitation on Certain Prescriptions.

(1) In this subsection, the following definitions apply:

(A) "Controlled substance", "opiate", and "prescribe" have the meanings assigned by Texas Health and Safety Code §481.002.

(B) "National holiday" means a day described by Texas Government Code §662.003(a).

(2) When prescribing a controlled substance to a patient as a teledentistry dental service, a dentist must not prescribe more than is necessary to supply a patient for:

(A) if the prescription is for an opiate, a two-day period; or

(B) if the prescription is for a controlled substance other than an opiate, a five-day period.

(3) For each day in a period described by paragraph (2) of this subsection that is a Saturday, Sunday, or national holiday, the period is extended to include the next day that is not a Saturday, Sunday, or national holiday.

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 October 27, 2021.

TRD-202104328
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: December 12, 2021
For further information, please call: (512) 305-8910

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

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

SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

DIVISION 4. PROVISION AND COORDINATION OF TREATMENT SERVICES

26 TAC §558.303

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §558.303, concerning Standards for Possession of Sterile Water or Saline, Certain Vaccines or Tuberculin, and Certain Dangerous Drugs.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Texas Health and Safety Code §142.0062(a) amended by House Bill 797, 87th Legislature, Regular Session, 2021. Section 142.0062(a) allows a Home and Community Support Services Agency (HCSSA) to purchase, store, or transport for administering any vaccine approved, authorized for emergency use, or otherwise permitted by the United States Food and Drug Administration to treat or mitigate the spread of a communicable disease.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §558.303, Standards for Possession of Sterile Water or Saline, Certain Vaccines or Tuberculin, and Certain Dangerous Drugs, allows a HCSSA to purchase, store, or transport for administration any vaccine approved, authorized for emergency use, or otherwise permitted by the United States Food and Drug Administration to treat or mitigate the spread of a communicable disease. The proposed amendment adds the word "household" to the list of entities that a HCSSA's registered or licensed vocational nurses may administer vaccine to. The proposed amendment requires a HCSSA to transport vaccines in a sealed portable container and requires a HCSSA to have policies and procedures that ensure the container is handled and stored properly in accordance with the vaccine manufacturer's instructions and guidance from the Centers for Disease Control and Prevention.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules 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 expand existing rule;

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

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

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

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

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Associate Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be improved health and safety of residents and individuals receiving services from a home and community support services agencies' programs.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because there is no additional cost to complying with the rule.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Tahoe Fintel, Senior Policy Specialist, at (512) 438-3161 in HHSC Regulatory Services Division.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R091" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Health and Safety Code §142.0011, which provides that the Executive Commissioner of HHSC shall adopt rules establishing minimum standards for acceptable quality of care provided to clients by HCSSAs.

The amendment implements Texas Government Code §531.0055 and Health and Safety Code §§142.0011 and 142.0062(a).

§558.303. Standards for Possession of Sterile Water or Saline, Certain Vaccines or Tuberculin, and Certain Dangerous Drugs.

An agency that possesses sterile water or saline, certain vaccines or tuberculin, or certain dangerous drugs, as specified by this section, must comply with the provisions of this section.

(1) Possession of sterile water or saline. An agency or its employees, who are RNs or LVNs, may purchase, store, or transport for the purpose of administering to their home health or hospice clients under physician's orders:

(A) sterile water for injection and irrigation; and

(B) sterile saline for injection and irrigation.

(2) Possession of certain vaccines or tuberculin.

(A) An agency or its employees, who are RNs or LVNs, may purchase, store, or transport for administering to the agency's employees, home health or hospice clients, or client family and household members under physician's standing orders the following dangerous drugs:

(i) hepatitis B vaccine;

(ii) influenza vaccine;

(iii) tuberculin purified protein derivative for tuberculosis testing; [~~and~~]

(iv) pneumococcal polysaccharide vaccine; and

(v) any other vaccine approved, authorized for emergency use, or otherwise permitted for use by the United States Food and Drug Administration to treat or mitigate the spread of a communicable disease, as defined by Texas Health and Safety Code §81.003.

(B) An agency that purchases, stores, or transports a vaccine or tuberculin under this section must ensure that any standing order for the vaccine or tuberculin:

(i) is signed and dated by the physician;

(ii) identifies the vaccine or tuberculin covered by the order;

(iii) indicates that the recipient of the vaccine or tuberculin has been assessed as an appropriate candidate to receive the vaccine or tuberculin and has been assessed for the absence of any contraindication;

(iv) indicates that appropriate procedures are established for responding to any negative reaction to the vaccine or tuberculin; and

(v) orders that a specific medication or category of medication be administered if the recipient has a negative reaction to the vaccine or tuberculin.

(C) An agency or the agency's authorized employees may purchase, store, or transport vaccines or tuberculin in a sealed portable container only if the agency has established policies and procedures to ensure that:

(i) the container is handled properly with respect to storage, transportation, and temperature stability according to manufacturer's instructions; and

(ii) the agency adheres to guidance from the Centers for Disease Control and Prevention and the Texas Health and Human Services Commission.

(3) Possession of certain dangerous drugs.

(A) In compliance with Texas Health and Safety Code §142.0063, an agency or its employees, who are RNs or LVNs, may purchase, store, or transport for the purpose of administering to their

home health or hospice patients, in accordance with subparagraph (C) of this paragraph, the following dangerous drugs:

(i) any of the following items in a sealed portable container of a size determined by the dispensing pharmacist:

(I) 1,000 milliliters of 0.9 percent sodium chloride intravenous infusion;

(II) 1,000 milliliters of 5.0 percent dextrose in water injection; or

(III) sterile saline; or

(ii) not more than five dosage units of any of the following items in an individually sealed, unused portable container:

(I) heparin sodium lock flush in a concentration of 10 units per milliliter or 100 units per milliliter;

(II) epinephrine HCI solution in a concentration of one to 1,000;

(III) diphenhydramine HCI solution in a concentration of 50 milligrams per milliliter;

(IV) methylprednisolone in a concentration of 125 milligrams per two milliliters;

(V) naloxone in a concentration of one milligram per milliliter in a two-milliliter vial;

(VI) promethazine in a concentration of 25 milligrams per milliliter;

(VII) glucagon in a concentration of one milligram per milliliter;

(VIII) furosemide in a concentration of 10 milligrams per milliliter;

(IX) lidocaine 2.5 percent and prilocaine 2.5 percent cream in a five-gram tube; or

(X) lidocaine HCL solution in a concentration of 1 percent in a two-milliliter vial.

(B) An agency or the agency's authorized employees may purchase, store, or transport dangerous drugs in a sealed portable container only if the agency has established policies and procedures to ensure that:

(i) the container is handled properly with respect to storage, transportation, and temperature stability;

(ii) a drug is removed from the container only on a physician's written or oral order;

(iii) the administration of any drug in the container is performed in accordance with a specific treatment protocol; and

(iv) the agency maintains a written record of the dates and times the container is in the possession of an RN or LVN.

(C) An agency or the agency's authorized employee who administers a drug listed in subparagraph (A) of this paragraph may administer the drug only in the client's residence, under physician's orders, in connection with the provision of emergency treatment or the adjustment of:

(i) parenteral drug therapy; or

(ii) vaccine or tuberculin administration.

(D) If an agency or the agency's authorized employee administers a drug listed in subparagraph (A) of this paragraph, pursuant to a physician's oral order, the agency must receive a signed copy of the order:

(i) not later than 24 hours after receipt of the order, reduce the order to written form and send a copy of the form to the dispensing pharmacy by mail or fax transmission; and

(ii) not later than 20 days after receipt of the order, send a copy of the order, as signed by and received from the physician, to the dispensing pharmacy.

(E) A pharmacist that dispenses a sealed portable container under this subsection will ensure that the container:

(i) is designed to allow access to the contents of the container only if a tamper-proof seal is broken;

(ii) bears a label that lists the drugs in the container and provides notice of the container's expiration date, which is the earlier of:

(I) the date that is six months after the date on which the container is dispensed; or

(II) the earliest expiration date of any drug in the container; and

(iii) remains in the pharmacy or under the control of a pharmacist, RN, or LVN.

(F) If an agency or the agency's authorized employee purchases, stores, or transports a sealed portable container under this subsection, the agency must deliver the container to the dispensing pharmacy for verification of drug quality, quantity, integrity, and expiration dates not later than the earlier of:

(i) the seventh day after the date on which the seal on the container is broken; or

(ii) the date for which notice is provided on the container label.

(G) A pharmacy that dispenses a sealed portable container under this section is required to take reasonable precautionary measures to ensure that the agency receiving the container complies with subparagraph (F) of this paragraph. On receipt of a container under subparagraph (F) of this paragraph, the pharmacy will perform an inventory of the drugs used from the container and will restock and reseal the container before delivering the container to the agency for reuse.

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 October 29, 2021.

TRD-202104356
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: December 12, 2021
For further information, please call: (512) 438-3161

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CHAPTER 570. LONG-TERM CARE PROVIDER RULES DURING A CONTAGIOUS

DISEASE OUTBREAK, EPIDEMIC, OR PANDEMIC

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Texas Administrative Code, Title 26, Part 1, new Chapter 570, consisting of §§570.1, 570.2, 570.101, 570.103, 570.105, 570.107, 570.109, 570.111, 570.113, 570.201, 570.203, 570.205, 570.207, 570.209, 570.211, 570.301, 570.302, 570.303, 570.305, 570.307, 570.309, 570.311, 570.313, 570.315, 570.317, 570.318, 570.319, 570.321, 570.323, 570.325, 570.327, 570.329, 570.401, 570.403, 570.405, 570.407, 570.409, 570.411, 570.501, 570.503, 570.505, 570.507, 570.509, 570.511, 570.513, 570.514, 570.515, 570.517, 570.601, 570.603, 570.605, 570.607, 570.609, 570.611, 570.613, 570.701, 570.703, 570.705, 570.707, 570.709, 570.711, 570.713, 570.801, 570.802, 570.803, 570.805, and 570.807, concerning Subchapter A, Introduction; Subchapter B, Assisted Living Facilities; Subchapter C, Day Activity and Health Services; Subchapter D, Home and Community Support Services Agencies; Subchapter E, Prescribed Pediatric Extended Care Centers; Subchapter F, Nursing Facilities; Subchapter G, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions; Subchapter H, Home and Community-Based Services; and Subchapter I, Texas Home Living.

BACKGROUND AND PURPOSE

The purpose of the proposal is to create provider rules that apply to Assisted Living Facilities (ALFs), Day Activity Health Services (DAHS), Home and Community Support Services Agencies (HCSSAs), Prescribed Pediatric Extended Care Centers (PPECCs), Nursing Facilities (NFs), Intermediate Care Facilities for Individuals with and Intellectual Disability or Related Conditions (ICF/IIDs), Home and Community-based Services (HCS) program providers, and Texas Home Living (TxHmL) program providers during a contagious disease outbreak, epidemic, or pandemic.

The proposed rules implement Texas Health and Safety Code, Chapter 260B, Right to Essential Caregiver Visits for Certain Residents, created by Senate Bill (S.B.) 25, 87th Legislature, Regular Session, 2021. Chapter 260B states that all residents of an ALF, NF or ICF/IID and individuals receiving services through an HCS program provider in a residence have the right to designate an essential caregiver and have essential caregiver visits. A facility or program provider may not prohibit in-person visitation with an essential caregiver, except for certain limited periods of time as provided in Chapter 260B.

The proposed rules also implement Texas Health and Safety Code, Chapter 260C, In-Person Visitation with Religious Counselor, created by S.B. 572, 87th Legislature, Regular Session, 2021. Chapter 260C protects the religious liberty of each individual or resident of an HCSSA, NF, or ALF by prohibiting a HCSSA, NF, or ALF from preventing a resident or client from receiving in-person visitation with a religious counselor during a public health emergency unless there is a federal law or a federal agency that prohibits in-person visitation during that period.

The proposed rules were developed based on issues and concerns that arose during the COVID-19 pandemic and lessons learned that might be helpful to providers. The intent is to provide minimum standards for what a facility, DAHS, HCSAA, PPECC, and program provider must do during a contagious disease outbreak, epidemic, or pandemic related to visitation, testing, screening, reporting, quarantining or isolating of residents and individuals, and other infection prevention and control measures.

SECTION-BY-SECTION SUMMARY

Proposed new §570.1, Purpose and Application, states that proposed new Chapter 570 applies to all long-term care providers, including: ALFs, Day Activity Health Services (DAHS), HCSSAs, Prescribed Pediatric Extended Care Centers (PPECC), NFs, ICF/IIDs, HCS providers and TxHmL providers. The chapter requires all providers to comply with the chapter during a contagious disease outbreak, epidemic, or pandemic unless an executive order from the Governor of Texas, the President of the United States, or another applicable authority is more restrictive than these rules.

Proposed new §570.2, Definitions, provides definitions related to the new rules and includes clinical terms related to a contagious disease, outbreak, epidemic, or pandemic.

Proposed new §570.101, Emergency Response to Outbreak, Epidemic, or Pandemic, requires an ALF to regularly check for and implement federal, state, and local guidance during a contagious disease outbreak, epidemic, or pandemic. During a contagious disease outbreak, epidemic, or pandemic an ALF is required to maintain infection prevention and control measures. An ALF must put a protocol in place for receiving resident deliveries and develop communication plans for communicating with current and prospective residents, resident representatives, emergency contacts, and ALF staff.

Proposed new §570.103, Testing, describes an ALF's testing and monitoring activities that must take place during a contagious disease outbreak, epidemic, or pandemic.

Proposed new §570.105, Reporting, requires an ALF to report new positive cases of the contagious disease that is the basis of the outbreak, epidemic, or pandemic that are identified to HHSC in accordance with any guidance that HHSC or the Texas Department of State Health Services (DSHS) issues in relation to the contagious disease outbreak, epidemic, or pandemic.

Proposed new §570.107, Screening, provides screening criteria requirements, and requires an ALF to screen all visitors prior to them entering a facility, except emergency services personnel during an emergency. An ALF must keep a visitor log and post signage at all entrances of a facility prohibiting entry prior to being screened. Staff who do not pass screening must leave the facility. Residents who do not pass screening must be quarantined and monitored. The facility must allow those providing critical assistance including essential caregiver visitors into the facility if they pass the screening criteria.

Proposed new §570.109, Staff Requirements, requires an ALF to maintain adequate staffing levels and have a staffing plan in place to ensure staff are trained and supervised. At least one staff member must be responsible for infection control protocol. The ALF must document training was provided to staff about providing care to residents in isolation or quarantine, proper donning and doffing of PPE, disinfecting procedures, emergency preparedness plans, and other infection control plans.

Proposed new §570.111, Visitation, permits an ALF to change its visitation policies and procedures during a contagious disease outbreak, epidemic, or pandemic in response to directives from DSHS or HHSC. However, the new section prohibits an ALF from adopting visitation policies and procedures that are more restrictive than these directives or executive or local orders. The new section also requires an ALF to permit clergy, religious coun-

selor, and end-of-life visits and allows an ALF to permit salon services visits. An ALF must adopt policies and procedures for in-person visitation with a religious counselor that comply with the provisions in this section. If an ALF allows salon services visits, the ALF must establish policies and procedures that provide conditions for a salon services visit to occur. Finally, the new section requires an ALF to immediately communicate to the resident representative any changes in a resident's condition that would qualify the resident for end of life visits.

Proposed new §570.113, Essential Caregiver Visits, requires an ALF to permit essential caregiver visits. It requires a facility to inform the resident of the right to appeal a facility's revocation of a person's designation as an essential caregiver.

Proposed new §570.201, Emergency Response to Outbreak, Epidemic, or Pandemic, requires a DAHS to regularly check for and implement federal, state, and local guidance during a contagious disease outbreak, epidemic, or pandemic. During a contagious disease outbreak, epidemic, or pandemic a DAHS is required to maintain infection prevention and control measures. A DAHS must put a protocol in place for receiving resident deliveries and develop communication plans for communicating with current and prospective residents, resident representatives, emergency contacts, and DAHS staff.

Proposed new §570.203, Monitoring, requires a DAHS to monitor clients and staff for signs and symptoms, monitor staff for possible exposure, and activate outbreak infection control measures if a positive case is identified in a client or staff member.

Proposed new §570.205, Reporting, requires a DAHS to report new positive cases of the contagious disease that is the basis of the outbreak, epidemic, or pandemic that are identified to HHSC in accordance with any guidance that HHSC or the Texas Department of State Health Services (DSHS) issues in relation to the outbreak, epidemic, or pandemic.

Proposed new §570.207, Screening, provides screening criteria requirements, and requires a DAHS to screen all visitors prior to them entering a facility, except emergency services personnel during an emergency. The proposed new rule also requires that the facility keep a screening log. Staff who do not pass screening must leave the facility. Clients who do not pass screening must be quarantined and monitored. The facility must allow essential caregiver visitors into the facility, if they pass the screening criteria.

Proposed new §570.209, Staff Requirements, requires a DAHS to maintain adequate staffing levels and have a staffing plan in place to ensure staff are trained and supervised. At least one staff member must be responsible for infection control protocol. The DAHS must document training was provided to staff about providing care to residents in isolation or quarantine, proper donning and doffing of PPE, disinfecting procedures, emergency preparedness plans, and other infection control plans.

Proposed new §570.211, Visitation, requires a DAHS to permit clergy or religious counselor visits. It also permits a DAHS' visitation policies and procedures to change in response to a public health emergency, requires visitation procedures to conform to any guidance or directives issued by the Centers for Disease Control and Prevention (CDC), HHSC, or DSHS.

Proposed new §570.301, Emergency Response to Outbreak, Epidemic, or Pandemic, requires a HCSSA to regularly check for and implement federal, state, and local guidance during an outbreak, epidemic, or pandemic. During a contagious disease outbreak, epidemic, or pandemic a HCSSA is required to maintain infection prevention and control measures. A HCSSA must put a protocol in place for receiving deliveries and develop communication plans for communicating with current and prospective clients, client representatives, emergency contacts, and HCSSA staff.

Proposed new §570.302, Documentation of Physician's or Practitioner's Signatures, requires an HCSSA to document efforts to obtain a physician or practitioner's signature of verbal orders and plans of care.

Proposed new §570.303, Testing, describes the testing and monitoring activities that must take place during a contagious disease outbreak, epidemic, or pandemic.

Proposed new §570.305, Reporting, requires an HCSSA to report new positive cases of the contagious disease that is the basis of the outbreak, epidemic, or pandemic that are identified to HHSC in accordance with any guidance that HHSC or the Texas Department of State Health Services (DSHS) issues in relation to the contagious disease outbreak, epidemic, or pandemic.

Proposed new §570.307, Screening, provides screening criteria requirements, and requires an HCSSA to screen all staff at the beginning of each workday or shift prior to staff conducting a home visit. Staff who do not pass screening are prohibited from conducting a home visit. An HCSSA must document each required screening.

Proposed new §570.309, Staff Requirements, requires an HCSSA to maintain adequate staffing levels and have a staffing plan in place to ensure staff are trained and supervised. At least one staff member must be responsible for infection control protocol. The HCSSA must document training was provided to staff about providing care to residents in isolation or quarantine, proper donning and doffing of PPE, disinfecting procedures, emergency preparedness plans, and other infection control plans.

Proposed new §570.311, Determining Essential Visit, requires an HCSSA to determine if a scheduled home visit is an essential visit.

Proposed new §570.313, Supervisory Visits by Telecommunication, permits a parent agency administrator or alternate administrator, supervising nurse or alternate supervising nurse, to make the monthly supervisory visit through virtual communication, such as phone or videoconference.

Proposed new §570.315, Client Symptoms, requires an HCSSA to coordinate care if a home health, hospice, or personal assistance services client reports symptoms associated with the contagious disease that caused an outbreak, epidemic, or pandemic.

Proposed new §570.317, Emergency Response to Outbreak, Epidemic, or Pandemic for Hospice Inpatient Unit, requires a hospice agency operating an inpatient hospice unit to regularly check for and implement federal, state, and local guidance during an outbreak, epidemic, or pandemic. During a contagious disease outbreak, epidemic, or pandemic a hospice inpatient unit is required to maintain infection prevention and control measures. A hospice inpatient unit must put a protocol in place for receiving deliveries and develop communication plans for communicating with current and prospective clients, client representatives, emergency contacts, and hospice inpatient unit staff.

Proposed new §570.318, Testing, describes the testing and monitoring activities that must take place during a contagious

disease outbreak, epidemic, or pandemic. A hospice agency operating an inpatient hospice facility must develop protocol for clients and staff who refuse testing.

Proposed new §570.319, Reporting, requires a hospice agency operating an inpatient hospice facility to report new positive cases of the contagious disease that is the basis of the outbreak, epidemic, or pandemic that are identified to HHSC in accordance with any guidance that HHSC or the Texas Department of State Health Services (DSHS) issues in relation to the contagious disease outbreak, epidemic, or pandemic.

Proposed new §570.321, Screening, provides screening criteria requirements, and requires a hospice agency operating an inpatient hospice facility to screen all staff at the beginning of each workday or shift prior to staff conducting a home visit. Staff who do not pass screening are prohibited from conducting a home visit. A hospice agency operating an inpatient hospice facility must document each required screening.

Proposed new §570.323, Staff Requirements, requires the hospice agency operating a hospice inpatient unit to ensure staffing levels are adequate to meet the needs of all clients, including those in isolation and quarantine. Each hospice agency operating a hospice inpatient unit is required to have the infection control coordinator develop and review infection control protocols. Each hospice agency operating a hospice inpatient unit is required to document training was provided to staff about providing care to residents in isolation or quarantine, proper donning and doffing of PPE, disinfecting procedures, emergency preparedness plans, and other infection control plans.

Proposed new §570.325, Visitation, permits a hospice agency operating a hospice inpatient unit to change its visitation policies and procedures during a contagious disease outbreak, epidemic, or pandemic in response to directives from DSHS or HHSC. The new section also requires a hospice operating a hospice inpatient unit to permit clergy, religious counselor, and end-of-life visits and allows a hospice agency operating a hospice inpatient unit to permit salon services visits. A hospice operating an inpatient hospice unit must adopt policies and procedures for in-person visitation with a religious counselor that comply with the provisions in this section. If a hospice operating an inpatient hospice unit allows salon services visits, the hospice operating an inpatient hospice unit must establish policies and procedures that provide conditions for a salon services visit to occur. Finally, the new section requires a hospice operating an inpatient hospice unit to immediately communicate to the client representative any changes in a client's condition that would qualify the client for end of life visits.

Proposed new §570.327, Essential Caregiver Visits, requires that a hospice operating an inpatient hospice unit permit essential caregiver visits. A hospice operating an inpatient hospice unit must develop procedures to enable physical contact between the client and the essential caregiver. The hospice operating an inpatient hospice unit may revoke an essential caregiver designation if the caregiver violates safety protocols. Within 24 hours of a revocation, the hospice agency operating an inpatient hospice unit must inform the client of his or her right to appeal the revocation.

Proposed new §570.329, Temporary Partial or Full Closure to Allow for Space to Be Used to Treat Non-Hospice Clients in an Emergency, permits a hospice agency operating an inpatient unit to temporarily fully or partially close to allow space to be used by a hospital for overflow services to infectious patients who are not hospice clients.

Proposed new §570.401, Emergency Response to Outbreak, Epidemic, or Pandemic, requires a PPECC to regularly check for and implement federal, state, and local guidance during a contagious disease outbreak, epidemic, or pandemic. During a contagious disease outbreak, epidemic, or pandemic a PPECC is required to maintain infection prevention and control measures. A PPECC must put a protocol in place for receiving deliveries and develop communication plans for communicating with current and prospective minors, minor's representatives, emergency contacts, and PPECC staff.

Proposed new §570.403, Testing, requires a PPECC to conduct routine testing of all staff and minors per HHSC or DSHS issued guidance during a contagious disease outbreak, epidemic, or pandemic. A PPECC must monitor minors and staff for signs and symptoms, possible exposure, and activate outbreak infection control measures if a positive case is identified in a minor or staff.

Proposed new §570.405, Reporting, requires a PPECC to report new positive cases of the contagious disease that is the basis of the outbreak, epidemic, or pandemic that are identified to HHSC in accordance with any guidance that HHSC or the Texas Department of State Health Services (DSHS) issues in relation to the contagious disease outbreak, epidemic, or pandemic.

Proposed new §570.407, Screening, a PPECC must screen all visitors prior to allowing them into the center, except emergency services personnel entering the center in an emergency. Visitors showing signs and symptoms must leave the center. The PPECC is required to keep a screening log and document each person's screening information who enters the building. A PPECC must screen all staff at the beginning of each shift, prior to entering the center; staff who do not pass must leave the center. The PPECC must screen minors in accordance with any HHSC or DSHS issued guidance.

Proposed new §570.409, Staff Requirements, requires a PPECC to ensure staffing levels are adequate to meet the needs of all minors. A PPECC must have a staffing plan in place that includes a staffing contingency plan in the event multiple employees are out due to illness. The proposed new rule also requires a PPECC to have at least one staff member responsible for infection control protocol. A PPECC must document training was provided to staff about providing care to residents in isolation or quarantine, proper donning and doffing of PPE, disinfecting procedures, emergency preparedness plans, and other infection control plans.

Proposed new §570.411, Visitation, requires a PPECC to permit clergy or spiritual counselor to visit a minor.

Proposed new §570.501, Planning for Outbreak, Epidemic, or Pandemic, requires a NF to update infection control plans to include information specific to the emerging contagious disease, outbreak, epidemic, or pandemic, including addressing preparation by maintaining at least two weeks of PPE supplies, training staff on infection control plans, and dedicating staff to various resident populations. The infection control plan must include staff training to address which PPE is appropriate for use in each area of the facility, donning and doffing of PPE, cleaning and disinfecting policies and procedures, and contingency plans for staffing shortages due to employee illness. The infection control plan must address mitigation through isolation and quarantine plans and designating staff to work an assigned cohort. The infection control plan must also include testing pro-

cedures, protecting resident rights, and promoting socialization and preventing isolation. Proposed new §570.501 also requires a NF to ensure that its emergency preparedness plans address emerging contagious diseases, epidemics, and pandemics.

Proposed new §570.503, Emergency Response to Outbreak, Epidemic, or Pandemic, requires a NF to have a plan to check for and implement federal, state, and local guidance during a contagious disease outbreak, epidemic, or pandemic. During a contagious disease outbreak, epidemic, or pandemic a NF is required to maintain infection prevention and control measures. Proposed new §570.503 also requires a NF put a protocol in place for receiving resident deliveries and develop communication plans for communicating with current and prospective residents, resident representatives, emergency contacts, and NF staff.

Proposed new §570.505, Testing, requires a NF to conduct routine testing of all staff and residents during a contagious disease outbreak, epidemic, or pandemic. During a facility outbreak, the NF is required to test all residents and staff with signs and symptoms of the illness. The NF must also develop and implement protocols for residents and staff who refuse testing. During a contagious disease outbreak, epidemic, or pandemic the NF must monitor residents and staff for signs and symptoms, or possible exposure. The NF must activate outbreak infection control measures if a positive case is identified, a resident or staff exhibits related symptoms, or there is a suspected or known exposure.

Proposed new §570.507, Reporting, requires a NF to report new positive cases of the contagious disease that is the basis of the outbreak, epidemic, or pandemic that are identified to HHSC in accordance with any guidance that HHSC or the Texas Department of State Health Services (DSHS) issues in relation to the contagious disease outbreak, epidemic, or pandemic. The NF must also inform residents, resident representatives, and families of residents about the occurrence of a positive case of the contagious disease among residents or staff by 5:00 p.m. the next calendar day following the occurrence.

Proposed new §570.509, Screening, requires a NF, during the contagious disease outbreak, epidemic, or pandemic, to screen all visitors prior to entering the facility except emergency services personnel entering during an emergency. Visitors who fail the screening must not enter the NF. A NF must screen all staff at the beginning of each shift prior to entering the facility. Staff that do not pass screening must leave the NF immediately. A NF must screen residents at least three times per day. Residents who do not pass screening must be quarantined immediately, monitored, and tested in accordance with any guidance issued by the CDC, HHSC, or DSHS. A resident has the right to refuse testing. The facility must allow those providing critical assistance including essential caregiver visitors into the facility if they pass the screening criteria. Proposed new §570.511, Staff Requirements, a NF is required to ensure staffing levels meet the needs of all residents. A NF must have a staffing plan in place that ensures staff are designated to each area of the facility, ensures staff are supervised in each area of the facility, ensures staff who work at multiple facilities are assigned to the same cohort in each facility during an outbreak, epidemic, or pandemic, and has a contingency plan in the event multiple staff are out due to illness. A NF is required to document that training was provided to each employee regarding providing care to residents in isolation or quarantine, the proper use of PPE, proper cleaning and disinfecting procedures, the facility infection control plans, the emergency preparedness plans, standard assessment protocols, and enhanced assessment protocols.

Proposed new §570.513, Visitation, permits a NF to change its visitation policies and procedures during a contagious disease outbreak, epidemic, or pandemic in response to directives from the Centers Medicare and Medicaid Services, DSHS, or HHSC. However, the new section prohibits a NF from adopting visitation policies and procedures that are more restrictive than these directives or executive or local orders. The new section also requires a NF to permit clergy, religious counselor, and end-of-life visits and allows a NF to permit salon services visits. A NF must adopt policies and procedures for in-person visitation with a religious counselor that comply with the provisions in this section. If a NF allows salon services visits, the NF must establish policies and procedures that provide conditions for a salon services visit to occur. Finally, the new section requires a NF to immediately communicate to the resident representative any changes in a resident's condition that would qualify the resident for end of life visits.

Proposed new §570.514, Essential Caregiver Visits, requires a facility to permit essential caregiver visits. A facility must allow essential caregiver visits for at least two hours per day and develop procedures to enable physical contact between the resident and the essential caregiver. The facility may revoke an essential caregiver designation if the caregiver violates a facility's safety protocols. If a facility revokes an essential caregiver designation, the resident or the resident's legally authorized representative has a right to designate a new essential caregiver immediately. Within 24 hours of a revocation, the facility must inform the resident of their right to appeal the revocation.

Proposed new §570.515, Resident Focused Assessment or Monitoring, requires a NF to continue conducting resident assessments during a contagious disease outbreak, epidemic, or pandemic and increase the frequency of assessments when a positive case of the contagious disease is identified in the facility. A NF is required to update the baseline or comprehensive care plan for a resident during a contagious disease outbreak, epidemic, or pandemic and must address a resident's physical, mental and psychosocial needs and both virtual visitation and in-person visitation.

Proposed new §570.517, Continuity of Facility Operations, requires a NF to designate isolation and quarantine areas for residents with contagious disease or unknown status, and those exhibiting symptoms. Requires a NF to designate an area for residents who do not require isolation or quarantine. Requires a NF to designate an area for the storage of PPE, an area for donning PPE, and for doffing PPE. Requires a NF to ensure space for physical distancing needs related to the outbreak, epidemic, or pandemic. Requires a NF to issue specific guidance related to facility activities and establish communal dining precautions related to the contagious disease outbreak, epidemic, or pandemic.

Proposed new §570.601, Emergency Response to Outbreak, Epidemic, or Pandemic, requires an ICF/IID to have a plan to check for federal, state, and local guidance during an outbreak, epidemic, or pandemic. During a contagious disease outbreak, epidemic, or pandemic an ICF/IID is required to maintain infection prevention and control measures. An ICF/IID must put a protocol in place for receiving deliveries and develop communication plans for communicating with individuals, individual's representatives, emergency contacts, and ICF/IID staff.

Proposed new §570.603, Testing, requires an ICF/IID to develop testing protocols to test staff and individuals during an outbreak, epidemic, or pandemic. An ICF/IID must develop protocol for staff and individuals who refuse testing. An ICF/IID is required to monitor individuals and staff for: signs, symptoms, and possible exposures. An ICF/IID is required to activate infection control measures if a positive case is identified, an individual or staff are exhibiting symptoms, or there is a suspected or known exposure to a positive case.

Proposed new §570.605, Reporting, requires an ICF/IID to report new positive cases of the disease that is the basis of the outbreak, epidemic, or pandemic that are identified to HHSC in accordance with any guidance that HHSC or the Texas Department of State Health Services (DSHS) issues in relation to the outbreak, epidemic, or pandemic.

Proposed new §570.607, Screening, requires an ICF/IID to screen all visitors prior to entering the facility except emergency services personnel during an emergency. Visitors who fail screening must leave and reschedule their visit. An ICF/IID must keep a visitor screening log and document each screening. Requires an ICF/IID to screen each staff member at the beginning of each shift, prior to entering the facility; staff who fail screening must leave the facility. Individuals must be screened in accordance with any HHSC or DSHS issued guidance; individuals who fail screening must be quarantined and monitored. The facility must allow those providing critical assistance including essential caregiver visitors into the facility if they pass the screening criteria.

Proposed new §570.609, Staff Requirements, requires an ICF/IID to ensure staffing levels meet the needs of all individuals and have a staffing plan in place to make sure staff are trained to provide care to individuals in their assigned cohort, staff are supervised in each cohort of the facility, and includes a staffing contingency plan in the event multiple employees are out due to illness. An ICF/IID is required to have at least one staff member responsible for infection control. An ICF/IID must document that training was provided to each employee regarding providing care to residents in isolation or quarantine, the proper use of PPE, proper cleaning and disinfecting procedures, the facility infection control plans, the emergency preparedness plans, standard assessment protocols, and enhanced assessment protocols.

Proposed new §570.611, Visitation, permits an ICF to change its visitation policies and procedures during a contagious disease outbreak, epidemic, or pandemic in response to directives from the DSHS or HHSC. The new section also requires an ICF to permit clergy, religious counselor, and end-of-life visits and allows an ICF to permit salon services visits. An ICF must adopt policies and procedures for in-person visitation with a religious counselor that comply with the provisions in this section. If an ICF allows salon services visits, the ICF must establish policies and procedures that provide conditions for a salon services visit to occur. Finally, the new section requires an ICF to immediately communicate to the resident representative any changes in a resident's condition that would qualify the resident for end of life visits.

Proposed new §570.613, Essential Caregiver Visits, requires a facility to permit essential caregiver visits. A facility must develop procedures to enable physical contact between the individual and the essential caregiver. The facility may revoke an essential caregiver designation if the caregiver violations a facility's safety protocols. Within 24 hours of a revocation, the facility must inform the individual of their right to appeal the revocation.

Proposed new §570.701, Emergency Response to Outbreak, Epidemic, or Pandemic, requires an HCS program provider to have a plan to check for federal, state, and local guidance during a contagious disease outbreak, epidemic, or pandemic. During a contagious disease outbreak, epidemic, or pandemic an HCS program provider is required to maintain infection prevention and control measures. An HCS program provider is required to have protocol in place for residences that receive deliveries from vendors, family members, and visitors. The proposed new rule also requires an HCS program provider to have a communication plan to communicate updates and information to individuals or an individual's legally authorized representative (LAR).

Proposed new §570.703, Testing, requires an HCS program provider to develop a testing strategy if testing is required by the CDC, HHSC, or DSHS. An HCS program provider is required to monitor individuals and staff for signs, symptoms, and possible exposures. An HCS program provider is required to activate infection control measures if a positive case is identified, an individual or staff are exhibiting symptoms, or there is a suspected or known exposure to a positive case.

Proposed new §570.705, Reporting, requires an HSC program provider to report new positive cases of the contagious disease that is the basis of the outbreak, epidemic, or pandemic that are identified to HHSC in accordance with any guidance that HHSC or the Texas Department of State Health Services (DSHS) issues in relation to the contagious disease outbreak, epidemic, or pandemic.

Proposed new §570.707, Screening, requires an HCS program provider to screen all visitors outside the residence prior to allowing them to enter, except emergency services personnel responding to an emergency. Visitors who fail screening must leave the residence. Staff who fail screening must leave the residence. An HCS program provider is required to permit an individual who lives in the residence, to enter the residence, even if the individual meets any of the screening criteria. An HCS program provider must allow those providing critical assistance including essential caregiver visitors into the residence if they pass the screening criteria.

Proposed new §570.709, Staff Requirements, requires an HCS program provider to have adequate staffing levels to meet the needs of individuals, including those in isolation or quarantine. An HCS program provider is required to have a staffing plan in place that: ensures staff are trained to provide care to individuals and includes a contingency plan in the event multiple employees are out due to illness. An HCS program provider must have at least one staff member responsible for infection control protocol. An HCS program provider is required to document that training was provided to each employee regarding providing care to residents in isolation or quarantine, the proper use of PPE, proper cleaning and disinfecting procedures, the facility infection control plans, the emergency preparedness plans, standard assessment protocols, and enhanced assessment protocols.

Proposed new §570.711, Visitation, permits a program provider to change its visitation policies and procedures during a contagious disease outbreak, epidemic, or pandemic in response to directives from DSHS or HHSC. The new section requires a program provider to permit clergy, religious counselor, and end-of-life visits and allows a program provider to permit salon services visits. A program provider must adopt policies and pro-

cedures for in-person visitation with a religious counselor that comply with the provisions in this section. If a program provider allows salon services visits, the program provider must establish policies and procedures that provide conditions for a salon services visit to occur. Finally, the new section requires a program provider to immediately communicate to the individual's representative any changes in an individual's condition that would qualify the individual for end of life visits.

Proposed new §570.713, Essential Caregiver Visits, requires a program provider to permit essential caregiver visits. A program provider must develop procedures to enable physical contact between the individual and the essential caregiver. The facility may revoke an essential caregiver designation if the caregiver violations a facility's safety protocols. Within 24 hours of a revocation, the program provider must inform the individual of their right to appeal the revocation.

Proposed new §570.801, Emergency Response to Outbreak, Epidemic, or Pandemic, requires a TxHmL program provider to have a plan to check for federal, state, and local guidance during a contagious disease outbreak, epidemic, or pandemic. During a contagious disease outbreak, epidemic, or pandemic a TxHmL program provider is required to maintain infection prevention and control measures. A TxHmL program provider must have protocol in place for residences that receive deliveries from vendors, family members, and visitors. A TxHmL program provider is required to have a communication plan to communicate updates and information to individuals or an individual's LAR.

Proposed new §570.802, Testing, requires a program provider to have a testing strategy for staff and individuals, if testing is available and is required.

Proposed new §570.803, Reporting, requires a TxHmL program provider to report new positive cases of the contagious disease that is the basis of the outbreak, epidemic, or pandemic that are identified to HHSC in accordance with any guidance that HHSC or the Texas Department of State Health Services (DSHS) issues in relation to the outbreak, epidemic, or pandemic.

Proposed new §570.805, Screening, requires a TxHmL program provider to screen all individuals and staff prior to providing services to an individual. If an individual fails screening, the service provider must not provide services and must notify the program provider. If a staff member fails screening, they must not provide services and must notify the program provider.

Proposed new §570.807, Staff Requirements, requires a TxHmL program provider to have adequate staffing levels to meet the needs of individuals, including those in isolation or quarantine. A TxHmL program provider must have a staffing plan in place that: ensures staff are trained to provide care to individuals and includes a contingency plan in the event multiple employees are out due to illness. A TxHmL program provider is required to have at least one staff member responsible for infection control protocol. The proposed new rule also requires a TxHmL program provider to document that training was provided to each employee regarding providing care to residents in isolation or quarantine, the proper use of PPE, proper cleaning and disinfecting procedures, the facility infection control plans, the emergency preparedness plans, standard assessment protocols, and enhanced assessment protocols.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rules will create a new rule;

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. 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 rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, do not impose a cost on regulated persons, and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Associate Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be improved health and safety of residents and individuals in long-term care facilities or receiving long-term care services during a contagious disease outbreak, epidemic, or pandemic by providing long-term care providers with infection prevention and control measures to take during a contagious disease outbreak, epidemic, or pandemic.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Tahoe Fintel, Senior Policy Specialist, at (512) 438-3161 in HHSC Regulatory Services Division.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R091" in the subject line.

SUBCHAPTER A. INTRODUCTION

26 TAC §570.1, §570.2

STATUTORY AUTHORITY

The new sections are authorized by: Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §§142.0011 and 142.012, which provide that the Executive Commissioner of HHSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents; Texas Health and Safety Code §§247.025 and 247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and ensure the quality of care and protection of residents' health and safety, respectively; Texas Health and Safety Code §248A.101, which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 248A and protect the health, safety, and comfort of the minors serviced by a PPECC; Texas Health and Safety Code §252.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 252; Human Resources Code §103.004, which requires the Executive Commissioner of HHSC to adopt rules for implementing Chapter 103 and set standards for the health and welfare of persons attending a DAHS facility; Texas Human Resources Code §32.021, which provides that the Executive Commissioner of HHSC shall adopt rules for the proper and efficient operation of the medical assistance program; and Health and Safety Code §260B(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures; and Texas Health and Safety Code §260C(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures.

The new sections implement Texas Government Code §531.0055; Health and Safety Code §§142.0011, 142.012, 242.001, 242.037, 247.025, 247.026, 248A.101, 252.008, 260B(b), and 260C(b); and Human Resources Code §§32.021 and 103.004.

§570.1. Purpose and Application.

(a) For the purposes of this chapter, a facility includes:

(1) a prescribed pediatric extended care center (PPECC) licensed under Chapter 550 of this title (relating to Licensing Standards for Prescribed Pediatric Extended Care Centers);

(2) an intermediate care facility for individuals licensed under Chapter 551 of this title (relating to Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions), or exempt from licensure under Texas Health and Safety Code §252.003;

(3) an assisted living facility licensed under Chapter 553 of this title (relating to Licensing Standards for Assisted Living Facilities);

(4) a nursing facility licensed under Chapter 554 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification);

(5) a home and community support services agency licensed under Chapter 558 of this title (relating to Licensing Standards for Home and Community Support Services Agencies);

(6) a day activity and health services facility licensed under Chapter 559 of this title (relating to Day Activity and Health Services Requirements);

(7) a home and community-based services program provider under Texas Administrative Code (TAC) Title 40, Chapter 9 (relating to Intellectual Disability Services--Medicaid State Operating Agency Responsibilities); or

(8) a Texas Home Living program provider under 40 TAC Chapter 9.

(b) A facility must comply with this chapter, which is activated when there is a contagious disease outbreak, epidemic, or pandemic among the staff or persons receiving services from the facility. A facility must develop all required policies and procedures prior to activation of this chapter, which must be implemented when the chapter is activated. Facilities must comply with guidance issued by the Centers for Disease Control and Prevention, Centers for Medicare and Medicaid Services, Texas Health and Human Services Commission, and Texas Department of State Health Services related to the outbreak, epidemic, or pandemic.

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

§570.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Airborne Precautions--Type of transmission-based precautions for persons known or suspected to be infected with pathogens transmitted by the airborne route. Airborne precautions are based on guidance issued by the Centers for Disease Control and Prevention.

(2) Assisted Living Facility (ALF)--A facility licensed under Texas Health and Safety Code, Chapter 247.

(3) CDC--The Centers for Disease Control and Prevention.

(4) Clergy--A person ordained for religious duty.

(5) Client--

(A) For a Home and Community Support Services Agency (HCSSA), this term means:

(i) a person receiving home health, hospice, or personal assistance services from a HCSSA; and

(ii) the family of a person receiving hospice services from a HCSSA.

(B) For a day activity and health services (DAHS), this term means a person receiving care in the DAHS facility.

(6) Cohort--A group of persons placed in rooms, halls, or sections of a facility with others who have the same positive, negative, or unknown status for an infectious disease; or the act of grouping persons with other persons who have the same status for a contagious disease.

(7) Contact precautions--The type of transmission-based precautions used for clients, individuals, or residents with a known or suspected infection that represents an increased risk of direct or indirect transmission through direct or indirect contact. Contact precautions are based on guidance from the CDC.

(8) Contagious disease--A type of infectious disease that is transmissible by direct or indirect contact with an infected person or infected bodily discharges or by contact with a contaminated surface.

(9) Day activity and health services (DAHS)--A facility licensed under Texas Human Resources Code, Chapter 103.

(10) Disease causing agent--A virus, bacteria, fungi, protozoa, helminth, or prion that causes an illness. Disease causing agents can lead to an outbreak, epidemic, or pandemic.

(11) Droplet precautions--A type of transmission-based precaution used for individuals, residents, or clients known or suspected to be infected with pathogens transmitted by respiratory droplets that are generated by an individual resident, or client when he or she is coughing, sneezing, or talking. Droplet precautions are based on guidance from the CDC.

(12) DSHS--Texas Department of State Health Services.

(13) End of life visit--A personal visit between a visitor and an individual, resident, or client who is receiving hospice services; who is at or near end of life, with or without receiving hospice services; or whose prognosis does not indicate recovery.

(14) Epidemic--The occurrence of more cases of a disease or other health condition than expected in an area or among a specific group of persons during a time period. The cases are presumed to have a common cause or to be related to one another in some way.

(15) Essential caregiver--A family member, friend, guardian, volunteer, or other person selected for in-person visits by an individual, an individual's legally authorized representative, a resident, or a resident's legally authorized representative, or a client or client's legally authorized representative.

(16) Essential caregiver visit--An in-person visit between an individual, resident, or client and a designated essential caregiver.

(17) Family education visit--A visit between a family education visitor and a client, who is in a hospice inpatient unit for an intensive stay, for the purpose of hospice staff educating the visitor on proper equipment use or care of the client after discharge from the unit. This definition applies only to an HCSSA.

(18) Family education visitor--A person, who may or may not be an essential caregiver, designated by a client, while the client is in the hospice inpatient unit for an intensive stay, to learn to provide regular care and support to the client and proper equipment use after discharge from the unit. This definition applies only to an HCSSA.

(19) HCSA Home and Community-based Services (HCS) program.

(20) Home and Community Support Services Agency (HCSSA)--An agency licensed under Texas Health and Safety Code, Chapter 142, to provide home health, hospice, or personal assistance services.

(21) Individual--A person enrolled in the Intermediate Care Facility for Individuals with an Intellectual Disability or Related Condition (ICF/IID) program, HCS program, or Texas Home Living (TxHmL) program. This definition applies to the ICF/IID, HCS, and TxHmL programs only.

(22) Infectious disease--An illness caused by germs such as bacteria, viruses, parasites, or fungi that enter the body, multiply, and can cause an infection. Some infectious diseases are contagious, and some are non-contagious.

(23) Inspection, testing, and maintenance (ITM) services for compliance--Services required to comply with requirements for inspecting, testing, and maintenance of fire protection systems and emergency systems.

(24) Intermediate Care Facility for Individuals with an Intellectual Disability or Related Condition (ICF/IID)--A facility licensed under Texas Health and Safety Code, Chapter 252, or exempt from licensure under Texas Health and Safety Code §252.003.

(25) Isolation--The separation of infected persons from all other individuals, residents, or clients to prevent transmission of contagious diseases to other susceptible persons. Isolation refers to the separation of ill persons.

(26) Legally authorized representative (LAR)--A person authorized by law to act on behalf of an individual, resident, or client with regard to a matter described by this chapter, and who may be the parent of a minor child or the legal guardian of or surrogate decision maker for the individual, resident, or client.

(27) Maintenance and repair--Patching, restoration, painting, or routine maintenance, without intentionally strengthening or upgrading, materials, elements, equipment, or fixtures for the purpose of maintaining such materials, elements, equipment, or fixtures in good or sound condition.

(28) Minor--A person younger than 21 years of age who is medically dependent or technologically dependent. This definition applies to the PPECC program only.

(29) Negative status--The status of a person who has tested negative for, is not exhibiting symptoms of, and has had no known exposure to the disease-causing agent.

(30) Nursing facility (NF)--A facility licensed under Texas Health and Safety Code, Chapter 242.

(31) Occupational Safety and Health Administration (OSHA)--The federal agency that ensures safe and healthful working conditions for workers by setting and enforcing standards and by providing training, outreach, education, and assistance.

(32) Outbreak--The occurrence of more cases of a particular infection, disease, injury, or other health condition beyond what is usually expected in a given location, area, or time among facility staff or facility-acquired cases among individuals, residents, or clients. Outbreaks can occur in a community or multiple geographical areas. The duration of an outbreak can range from days to years. In some cases, a single case of an infectious disease is considered an outbreak.

(33) Pandemic--An epidemic occurring over a widespread area (multiple countries or continents) and usually affecting a substantial proportion of the population.

(34) Personal protective equipment (PPE)--PPE includes specialized clothing, surgical masks, N95 respirators, face shields, goggles, gloves, disposable gowns, and other equipment worn for protection against transmission of infectious diseases.

(35) Persons providing critical assistance--Providers of essential services, clergy, family members, or friends of individuals, residents, and clients at the end of life, and designated essential caregivers.

(36) Persons with legal authority to enter--Law enforcement officers, representatives of the long-term care ombudsman's office, representatives of the protection and advocacy system in the state for persons with mental illness or persons with intellectual or developmental disabilities, legal guardians, and government personnel performing their official duties.

(37) Positive case--An incident of a contagious disease, which meets CDC defined criteria for a confirmed diagnosis of the infectious disease, that is the basis of an outbreak, epidemic, or pandemic. Diagnostic tools may include but are not limited to laboratory tests, clinical findings, and imaging scans.

(38) Positive status--The status of a person who has tested positive for a disease-causing agent and does not yet meet CDC guidance for the discontinuation of transmission-based precautions.

(39) Prescribed pediatric extended care center (PPECC)--A center licensed under Texas Health and Safety Code, Chapter 248A.

(40) Program provider--A contractor, as defined in 40 TAC §49.102 (relating to Definitions), that has a contract with the Texas Health and Human Services Commission (HHSC) to provide HCS program services, excluding a Financial Management Services Agency.

(41) Providers of essential services--Physicians, nurses, mental health specialists, HCSSA staff, social workers, therapists, attendants, and volunteers in any of those roles; persons operating under the authority of a local intellectual and developmental disability authority, a local mental health authority, or a local behavioral health authority; a representative of HHSC whose services are necessary to ensure individual or resident health and safety; and persons performing maintenance and repair or ITM services for compliance.

(42) Quarantine--The separation of persons who have been exposed to, or are suspected to have been exposed to, a contagious disease, in order to monitor for illness and to reduce potential transmission of infection to susceptible persons during the incubation period. Quarantine refers to the separation of potentially exposed persons from those who have not had a known exposure.

(43) Religious counselor--A person acting substantially in a pastoral or religious capacity to provide spiritual counsel to other persons.

(44) Residence--

(A) A host home or companion care, three-person, or four-person residence, as defined by the HCS billing guidelines, unless otherwise specified. This definition only applies to the HCS program in Subchapter H of this chapter (relating to Home and Community-Based Services); or

(B) a private home, a nursing facility, an assisted living facility, an ICF/IID facility, or an unlicensed independent living environment. This definition only applies to the HCSSA program in Subchapter D of this chapter (relating to Home and Community Support Services Agencies).

(45) Resident--A person residing in a facility. This definition applies to NFs and ALFs only.

(46) Salon services visit--A personal visit between a resident or individual and a salon services visitor.

(47) Salon services visitor--A barber or cosmetologist providing hair care or personal grooming services to an individual or resident.

(48) Staff--Any employee, volunteer, or contractor of a facility, program provider, center, or HCSSA.

(49) Texas Home Living (TxHmL)--A program operated by HHSC and approved by CMS in accordance with §1915(c) of the Social Security Act that provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

(50) Transmission-based precautions--The second tier of basic infection control to be used for persons who may be infected or colonized with certain infectious agents for which additional precautions are needed to prevent infection transmission. Types of transmission-based precautions include contact precautions, droplet precautions, and airborne precautions.

(51) Unknown status--The status of a person who has not been determined to have a positive or negative status with the disease-causing agent.

(52) Virtual visit--A personal visit using technology such as a phone, tablet, or computer.

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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SUBCHAPTER B. ASSISTED LIVING FACILITIES

26 TAC §§570.101, 570.103, 570.105, 570.107, 570.109, 570.111, 570.113

STATUTORY AUTHORITY

The new sections are authorized by: Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of ser-

vices by the health and human services agencies; Texas Health and Safety Code §§142.0011 and 142.012, which provide that the Executive Commissioner of HHSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents; Texas Health and Safety Code §§247.025 and 247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and ensure the quality of care and protection of residents' health and safety, respectively; Texas Health and Safety Code §248A.101, which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 248A and protect the health, safety, and comfort of the minors serviced by a PPECC; Texas Health and Safety Code §252.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 252; Human Resources Code §103.004, which requires the Executive Commissioner of HHSC to adopt rules for implementing Chapter 103 and set standards for the health and welfare of persons attending a DAHS facility; Texas Human Resources Code §32.021, which provides that the Executive Commissioner of HHSC shall adopt rules for the proper and efficient operation of the medical assistance program; and Health and Safety Code §260B(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures; and Texas Health and Safety Code §260C(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures.

The new sections implement Texas Government Code §531.0055; Health and Safety Code §§142.0011, 142.012, 242.001, 242.037, 247.025, 247.026, 248A.101, 252.008, 260B(b), and 260C(b); and Human Resources Code §§32.021 and 103.004.

§570.101. Emergency Response to Outbreak, Epidemic, or Pandemic.

(a) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, an assisted living facility (ALF) must regularly check federal, state, and local guidance.

(b) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, an ALF must:

(1) maintain infection control measures when:

(A) evacuation is necessary;

(B) sheltering in place is necessary; or

(C) receiving residents evacuating from another ALF that has positive cases of the disease or other health condition that is the basis of the outbreak, epidemic, or pandemic;

(2) have a transportation plan in place to evacuate residents as needed; and

(3) maintain a 90-day supply of personal protective equipment (PPE), including facemasks for droplet protection, N95 respirators, goggles, face shields, gloves, and gowns and ensure they are readily available in the event of an evacuation. Each facility determines what a 90-day supply means based on the CDC burn rate methodology.

(c) An ALF must have a protocol for receiving deliveries. This protocol must comply with any CDC guidance in place.

(d) Each ALF must have a communication plan to communicate the following information with residents, residents' representatives, resident's designated emergency contacts, and families:

(1) when a positive case is identified by the ALF;

(2) current visitation and activities policies and procedures;

(3) alternate methods of visitation that will be available during times of restricted visitation by executive order or other direction issued by the Governor of Texas, the President of the United States, or another applicable authority; and

(4) the primary point of contact at the ALF for questions and information and how residents, residents' representatives, and families can reach the primary point of contact.

(e) An ALF must post the information required in subsection (d)(2) - (4) of this section at its physical location.

(f) An ALF must develop infection prevention and control policies and procedures that:

(1) ensure resident rights in each area of the facility, including the right to:

(A) be informed of the resident's status;

(B) be informed of any symptoms or cases in the facility;

(C) personal visits, including virtual visits, based on the resident's personal status and the facility's status;

(D) refuse testing after receiving an explanation of the necessary precautions for residents who refuse; and

(E) leave the facility, based on their personal status and applicable guidance from the CDC, HHSC, or DSHS; and

(2) promote socialization and prevention of isolation, in accordance with CDC guidance, which must address:

(A) preventing unnecessary isolation or quarantine;

(B) ensuring that residents are not unnecessarily confined to their rooms;

(C) identifying and regularly facilitating activities that promote resident socialization in accordance with resident preferences; and

(D) identifying environmental factors that cause psychological stress.

§570.103. Testing.

(a) During a contagious disease outbreak, epidemic, or pandemic, the assisted living facility (ALF) must have a testing strategy for all staff and residents if required by the CDC, HHSC, or DSHS.

(b) The ALF must develop a protocol based on HHSC, DSHS, and CDC guidance for residents and staff who refuse testing.

(c) An ALF must:

(1) monitor residents and staff for signs and symptoms of the contagious disease that caused the outbreak, epidemic, or pandemic;

(2) monitor residents and staff for any possible exposure to the contagious disease that caused the outbreak, epidemic, or pandemic; and

(3) activate outbreak infection control measures if:

(A) a positive case of the contagious disease that caused the outbreak, epidemic, or pandemic is identified in a resident or staff;

(B) a resident or staff is exhibiting symptoms of the contagious disease that caused the outbreak, epidemic, or pandemic; or

(C) there is a suspected or known exposure of a resident or staff to a positive case of the contagious disease that caused the outbreak, epidemic, or pandemic.

§570.105. Reporting.

(a) An assisted living facility (ALF) must report new positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic to HHSC in accordance with any guidance issued by HHSC or the DSHS.

(b) An ALF must comply with a request from HHSC to submit data related to positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic.

(c) An ALF must inform facility staff, residents, resident representatives, resident's designated emergency contacts, or responsible parties of those residing in facilities by 5:00 p.m. the next calendar day following the occurrence of a confirmed infection among residents or staff. The ALF must not include personally identifiable information.

§570.107. Screening.

(a) An assisted living facility (ALF) must screen all persons attempting to enter the building prior to allowing them to enter the facility, except emergency services personnel entering the facility or facility campus in an emergency.

(b) The following screening criteria shall be used for visitors, staff, and residents:

(1) signs or symptoms specific to the contagious disease that has caused the outbreak, epidemic, or pandemic;

(2) any other signs and symptoms as outlined by the CDC; or

(3) testing positive, indicating that the person is still in the infectious period related to the contagious disease outbreak, epidemic, or pandemic.

(c) An ALF must document, in writing, all persons who enter the building in a log kept at the entrance of the facility and include the date, the person's name, current contact information, and data from the screening. The screening log might contain protected health information and must be protected in accordance with applicable state and federal law.

(d) An ALF must screen all staff at the beginning of each shift for the criteria in subsection (b) of this section prior to allowing them to enter the facility.

(e) Staff who do not pass screening must leave the ALF and not return until it is confirmed that they are not infectious or until they meet the criteria to discontinue quarantine or isolation.

(f) An ALF must screen residents in accordance with any HHSC or DSHS guidance.

(g) Residents who do not pass screening must be quarantined or isolated, as appropriate, and monitored in accordance with HHSC, DSHS, and CDC guidance.

(h) An ALF must allow persons providing critical assistance, including essential caregivers, to enter the facility if they pass the screening criteria in subsection (b) of this section. A facility may not prohibit entry of persons with legal authority to enter when performing their official duties.

(i) An ALF must post signage at all entrances of the facility prohibiting persons, other than emergency services personnel providing emergency services, from entering the facility prior to being screened.

§570.109. Staff Requirements.

(a) Each assisted living facility (ALF) must ensure staffing levels are adequate to meet the needs of all residents, including those in isolation and quarantine.

(b) Each ALF must have a staffing plan in place that:

(1) ensures staff in each area of the facility are trained to provide care to residents in their assigned area;

(2) ensures supervision of staff in each area of the ALF; and

(3) includes a staffing contingency plan to ensure adequate staffing in the event multiple staff are out due to illness.

(c) Each ALF must have at least one staff member responsible for infection control protocol.

(d) Each ALF must document that training was provided to each staff member and that the training topics included:

(1) providing care to residents in isolation;

(2) providing care to residents in quarantine;

(3) proper use of personal protective equipment (PPE) including appropriate PPE use for:

(A) each area of the facility;

(B) providing care to residents who are negative status, positive status, and unknown status; and

(C) providing care to residents exhibiting symptoms and awaiting test results;

(4) proper donning, doffing, and use of PPE;

(5) proper cleaning and disinfecting procedures;

(6) the ALF's infection control plan;

(7) the ALF's emergency preparedness plan;

(8) standard assessment protocols; and

(9) enhanced assessment protocols to be implemented when quarantine and isolation are necessary.

§570.111. Visitation.

(a) An assisted living facility's visitation policies and procedures may change during a contagious disease outbreak, epidemic, or pandemic in response to directives issued by the CDC, HHSC, or DSHS. Assisted living facility (ALF) visitation policies and procedures may not be more restrictive than directives issued by HHSC, DSHS, executive orders, or local orders.

(b) An ALF must permit clergy to visit a resident at the request of the resident.

(c) An ALF may not prohibit a resident from receiving in-person visitation with a religious counselor during a public health emergency on request from the resident, resident's legally authorized representative (LAR), or resident's family member. An ALF may prohibit in-person visitation with a religious counselor if a federal law or a federal agency requires the facility to prohibit in-person visitation during a public health emergency.

(d) An ALF must adopt policies and procedures for in-person visitation with a religious counselor during a contagious disease outbreak, epidemic, or pandemic. These policies and procedures:

(1) must comply with the minimum health and safety requirements for in-person visitation with religious counselors developed by HHSC;

(2) may include reasonable time, place, and manner restrictions on in-person visitation with religious counselors to:

(A) mitigate the spread of a communicable disease; and

(B) address the resident's medical condition;

(3) must include special consideration for residents receiving end of life care; and

(4) may require religious counselors to comply with an ALF's guidelines, policies, and procedures for in-person visitation with a religious counselor.

(e) An ALF may allow salon services visits. An ALF must establish policies and procedures in response to a contagious disease outbreak, epidemic, or pandemic, based on guidance issued by the CDC, HHSC, or DSHS that provide conditions for a salon visit to occur.

(f) An ALF must permit end of life visits and immediately communicate any changes in a resident's condition that would qualify the resident for end of life visits to the resident representative.

§570.113. Essential Caregiver Visits.

(a) A resident or the resident's legally authorized representative (LAR), if the resident is unable, has the right to designate an essential caregiver.

(b) An assisted living facility (ALF) must permit essential caregiver visits.

(c) An ALF must allow essential caregiver visits to occur outdoors, in the resident's bedroom, or in another area, when possible, upon request by a resident or resident's LAR.

(d) An ALF must develop a visitation policy that permits an essential caregiver to visit the resident for at least two hours each day.

(e) An ALF must have procedures in place to enable physical contact between the resident and the essential caregiver.

(f) The ALF must develop safety protocols for essential caregiver visits. The safety protocols may not be more stringent for essential caregivers than safety protocols for staff.

(g) An ALF must obtain the signature of the essential caregiver certifying that the essential caregiver will follow the facility's safety protocols for essential caregiver visits.

(h) An ALF may revoke an essential caregiver designation if the caregiver violates the facility's safety protocols or rules adopted under this chapter.

(i) If an ALF revokes a person's designation as an essential caregiver under subsection (h) of this section:

(1) the resident or the resident's LAR has the right to immediately designate another person as the essential caregiver;

(2) within 24 hours after the revocation, the facility must inform the resident or the resident's legally authorized representative, in writing, of the right to appeal the revocation and the procedures for filing an appeal with the Texas Health and Human Services Commission (HHSC) Appeals Division by:

(A) email at OCC_Appeals_Contested-Cases@hhs.texas.gov; or

(B) mail at HHSC Appeals Division, P.O. Box 149030, MC W-613, Austin, TX 78714-9030; and

(3) the ALF must comply with a hearing officer's decision regarding an appeal of an essential caregiver revocation.

(j) An ALF may petition HHSC to suspend in-person essential caregiver visits for no more than seven consecutive calendar days if in-person visitation poses a serious community health risk. An ALF may request an extension from HHSC to suspend in-person essential caregiver visitation beyond the ALF's original request, but HHSC may not approve an extension for a period that exceeds seven days and an ALF must separately request each extension. HHSC may deny the ALF's original request to suspend in-person essential caregiver visitation or the ALF's extension request if HHSC determines that in-person visitation does not pose a serious community health risk.

(k) An ALF may not suspend in-person essential caregiver visits in a calendar year for a time period that:

(1) is more than 14 consecutive days; or

(2) is more than a total of 45 days.

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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SUBCHAPTER C. DAY ACTIVITY AND HEALTH SERVICES

26 TAC §§570.201, 570.203, 570.205, 570.207, 570.209, 570.211

STATUTORY AUTHORITY

The new sections are authorized by: Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §§142.0011 and 142.012, which provide that the Executive Commissioner of HHSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing

facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents; Texas Health and Safety Code §§247.025 and 247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and ensure the quality of care and protection of residents' health and safety, respectively; Texas Health and Safety Code §248A.101, which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 248A and protect the health, safety, and comfort of the minors serviced by a PPECC; Texas Health and Safety Code §252.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 252; Human Resources Code §103.004, which requires the Executive Commissioner of HHSC to adopt rules for implementing Chapter 103 and set standards for the health and welfare of persons attending a DAHS facility; Texas Human Resources Code §32.021, which provides that the Executive Commissioner of HHSC shall adopt rules for the proper and efficient operation of the medical assistance program; and Health and Safety Code §260B(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures; and Texas Health and Safety Code §260C(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures.

The new sectionsimplement Texas Government Code §531.0055; Health and Safety Code §§142.0011, 142.012, 242.001, 242.037, 247.025, 247.026, 248A.101, 252.008, 260B(b), and 260C(b); and Human Resources Code §§32.021 and 103.004.

§570.201. Emergency Response to Outbreak, Epidemic, or Pandemic.

(a) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, a day activity and health services (DAHS) facility must regularly check federal, state, and local guidance related to the contagious disease outbreak, epidemic, or pandemic.

(b) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, a DAHS facility must:

(1) maintain infection control measures; and

(2) maintain an adequate supply of personal protective equipment (PPE), including facemasks for droplet protection, N95 masks, goggles, face shields, gloves, and gowns.

(c) A DAHS facility must have a protocol for receiving deliveries. This protocol must comply with any CDC guidance put into place.

(d) Each DAHS facility must have a communication plan to communicate the following information with clients, clients' representatives, and families:

(1) when a positive case is identified by the DAHS facility;

(2) current visitation and activities policies and procedures; and

(3) the primary point of contact at the DAHS facility for questions and information and how clients, clients' representatives, and families can reach the primary point of contact.

§570.203. Monitoring.

A day activity and health services facility must:

(1) monitor clients and staff for signs and symptoms;

(2) monitor clients and staff for any possible exposure; and

(3) activate outbreak infection control measures if:

(A) a positive case is identified in a client or staff;

(B) a client or staff is exhibiting related symptoms; and

(C) there is a suspected or known exposure of a client or staff to a positive case.

§570.205. Reporting.

(a) A day activity and health services (DAHS) facility must report new positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic to HHSC in accordance with any guidance issued by HHSC or DSHS.

(b) A DAHS must comply with a request from HHSC to submit data related to positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic.

(c) A DAHS must inform facility staff, clients, client representatives, client's designated emergency contacts, or responsible parties of those in facilities by 5:00 p.m. the next calendar day following the occurrence of a confirmed infection among clients or staff. The DAHS must not include personally identifiable information.

§570.207. Screening.

(a) A day activity and health services (DAHS) facility must screen all visitors prior to allowing them to enter the facility, except emergency services personnel entering the facility or facility campus in an emergency. Visitors who do not pass the screening must leave the DAHS facility.

(b) The following screening criteria shall be used for visitors, staff, and clients:

(1) signs or symptoms specific to the contagious disease that caused the outbreak, epidemic, or pandemic;

(2) any other signs and symptoms as outlined by the CDC; or

(3) testing positive, indicating that the visitor is still in the infectious period related to the contagious disease outbreak, epidemic, or pandemic.

(c) A DAHS facility must document, in writing, all persons who enter the building in a log kept at the entrance of the facility and include the date, the person's name, current contact information, and data from the screening. The screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(d) A DAHS facility must screen all staff at the beginning of each shift prior to allowing them to enter the facility in accordance with subsection (b) of this section.

(e) Staff who do not pass screening must leave the DAHS facility and not return until it is confirmed that they are not infectious or until they meet the criteria to discontinue quarantine or isolation.

(f) A DAHS facility must screen clients in accordance with any HHSC or DSHS guidance.

(g) Clients who do not pass screening must be kept in an isolated area until they leave the building.

(h) A DAHS facility must allow persons providing critical assistance to enter the facility if they pass the screening criteria in subsection (b) of this section. A DAHS facility may not prohibit entry of persons with legal authority to enter when performing their official duties.

(i) A DAHS facility must post signage at all entrances of the facility prohibiting persons from entering the facility prior to being screened.

§570.209. Staff Requirements.

(a) Each day activity and health services (DAHS) facility must have a staffing plan in place that includes a staffing contingency plan to ensure adequate staffing in the event multiple staff are out due to illness.

(b) Each DAHS facility must have at least one staff member responsible for infection control protocol.

(c) Each DAHS facility must document that training was provided to each staff member and that the training topics included:

(1) providing care to clients if they are required to isolate in an area of the DAHS facility while the client waits for transportation away from the facility;

(2) proper use of personal protective equipment (PPE) including appropriate PPE use for:

(A) each area of the DAHS facility;

(B) providing care to clients who are negative status, positive status, and unknown status; and

(C) providing care to those exhibiting symptoms and awaiting test results;

(3) proper use of personal protective equipment (PPE) including appropriate PPE use for:

(A) each area of the facility;

(B) providing care to clients who are negative status, positive status, and unknown status; and

(C) providing care to clients exhibiting symptoms and await test results;

(4) proper cleaning and disinfecting procedures;

(5) the facility's infection control plans;

(6) the facility's emergency preparedness plans;

(7) standard assessment protocols; and

(8) enhanced assessment protocols to be implemented when a client who meets the screening criteria awaits transportation away from the DAHS facility.

§570.211. Visitation.

(a) A day activity and health services (DAHS) facility's visitation policies and procedures may change during a contagious disease outbreak, epidemic, or pandemic in response to directives issued by the CDC, HHSC, or DSHS. DAHS visitation policies and procedures may not be more restrictive than directives issued by the CDC, HHSC, DSHS, executive orders, or local orders.

(b) A DAHS facility must permit clergy to visit a resident at the request of the resident.

(c) A DAHS facility may prohibit in-person visitation with a religious counselor during a public health emergency if a federal law or federal agency requires the facility to prohibit in-person visitation during that 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.

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SUBCHAPTER D. HOME AND COMMUNITY SUPPORT SERVICES AGENCIES
DIVISION 1. ALL HCSSAS EXCEPT HOSPICE INPATIENT UNITS

26 TAC §§570.301 - 570.303, 570.305, 570.307, 570.309, 570.311, 570.313, 570.315

STATUTORY AUTHORITY

The new sections are authorized by: Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §§142.0011 and 142.012, which provide that the Executive Commissioner of HHSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents; Texas Health and Safety Code §§247.025 and 247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and ensure the quality of care and protection of residents' health and safety, respectively; Texas Health and Safety Code §248A.101, which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 248A and protect the health, safety, and comfort of the minors serviced by a PPECC; Texas Health and Safety Code §252.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 252; Human Resources Code §103.004, which requires the Executive Commissioner of HHSC to adopt rules for implementing Chapter 103 and set standards for the health and welfare of persons attending a DAHS facility; Texas Human Resources Code §32.021, which provides that the Executive Commissioner of HHSC shall adopt rules for the proper and efficient operation of the medical assistance program; and Health and Safety Code §260B(b), which requires the Executive Commis-

sioner of HHSC to by rule develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures; and Texas Health and Safety Code §260C(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures.

The new sections implement Texas Government Code §531.0055; Health and Safety Code §§142.0011, 142.012, 242.001, 242.037, 247.025, 247.026, 248A.101, 252.008, 260B(b), and 260C(b); and Human Resources Code §§32.021 and 103.004.

§570.301 Emergency Response to Outbreak, Epidemic, or Pandemic.

(a) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, a home and community support services agency (HCSSA) must regularly check federal, state, and local guidance.

(b) During a contagious disease outbreak, epidemic, or pandemic an HCSSA must maintain a 90-day supply of personal protective equipment (PPE), including surgical facemasks for droplet protection, N95 masks, goggles, face shields, gloves, and gowns. The 90-day supply is based on the CDC burn rate methodology.

(c) An HCSSA must provide appropriate PPE to its staff to use while providing services to HCSSA clients.

(d) An HCSSA must ensure clients have appropriate PPE to use during the provision of services. A client's care plan, plan of care, or individualized service plan must address the specific type of PPE to be provided to the client, based on infection control needs related to the services being provided.

(e) An HCSSA must ensure staff conducting client services or entering a residence in a supervisory capacity are trained and knowledgeable on guidelines or recommendations issued by the CDC, Food and Drug Administration, Occupational Safety and Health Administration, DSHS, and HHSC regarding:

(1) the types of PPE that are appropriate for the services being provided;

(2) the proper use of PPE, including donning and doffing; and

(3) proper cleaning and disinfecting procedures in areas where services are being delivered.

(f) An HCSSA with a service area that has multiple counties must ensure transmission-based precautions and surveillance are county-specific and based on conditions in the county where services are delivered.

(g) HCSSA staff have legal authority to enter a facility to provide services to the facility's residents who are agency clients. HCSSA staff entering a facility must follow the infection control protocols of the facility, including testing requirements. HCSSA staff who are denied entry to a facility may report the denial to HHSC.

(h) Following a report made in accordance with §570.305(a) of this division (relating to Reporting), an HCSSA must document actions taken to ensure infection control among the HCSSA's clients and staff.

§570.302. Documentation of Physician's or Practitioner's Signatures.

During a contagious disease outbreak, epidemic, or pandemic, a home and community support services agency (HCSSA) may be exempt from obtaining physician's or practitioner's signatures of verbal orders and plans of care. The HCSSA must have documented evidence of coordination of care with the physician or practitioner.

§570.303. Testing.

During a contagious disease outbreak, epidemic, or pandemic, a home and community support services agency must develop a testing strategy for staff and clients if required by the CDC, HHSC, or DSHS.

§570.305. Reporting.

(a) A home and community support services agency (HCSSA) must report new positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic to HHSC in accordance with any guidance issued by HHSC or DSHS.

(b) A HCSSA must comply with a request from HHSC to submit data related to positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic.

(c) A HCSSA must inform staff, clients, client representatives, client's designated emergency contacts, or responsible parties of those receiving services from the HCSSA by 5:00 p.m. the next calendar day following the occurrence of a confirmed infection among clients or staff. The HCSSA must not include personally identifiable information.

§570.307. Screening.

(a) A home and community support services agency (HCSSA) must document each required screening.

(b) An HCSSA must screen staff at the beginning of each workday or shift and prior to the staff conducting a home visit or reporting to the agency's place of business for the following screening criteria:

(1) signs or symptoms specific to the contagious disease that has caused the outbreak, epidemic, or pandemic;

(2) any other signs and symptoms as outlined by the CDC; or

(3) testing positive, indicating that the person is still in the infectious period related to the contagious disease outbreak, epidemic, or pandemic.

(c) Staff who do not pass screening are prohibited from:

(1) conducting home visits; and

(2) reporting to the HCSSA's place of business where the staff will interact with any other staff or the public.

(d) If an HCSSA determines that a scheduled home visit is an essential visit in accordance with §570.311 of this division (relating to Determining Essential Visit), the HCSSA must screen the client and household members present in the home at the time of the visit or before conducting the home visit.

(e) If the client or a member of the household does not pass the screening, staff must use appropriate personal protective equipment during the visit. If the client and all members of the household pass the screening, staff must conduct the visit as indicated for the type of service provided.

§570.309. Staff Requirements.

(a) Each home and community support services agency (HCSSA) must ensure staffing and backup services are adequate to meet the needs of all clients regardless of the clients' infectious or communicable disease status, including those clients in isolation and quarantine.

(b) Each HCSSA must have a staffing plan in place that:

(1) ensures staff are trained to provide care to a client based on the client's and household members' status of infectious or communicable disease;

(2) ensures supervision of staff relating to infection control protocols;

(3) includes a staffing contingency plan to mitigate staffing shortages in the event multiple staff are unable to work due to illness or quarantine requirements in relation to the contagious disease outbreak, epidemic, or pandemic;

(4) ensures, to the extent practicable, that staff are assigned to the same client cohorts and licensed facilities to effect transmission-based precautions for staff and clients; and

(5) documents staffing shortage mitigation activities.

(c) An HCSSA licensed to provide personal assistance services must designate a staff member to be responsible for coordinating infection control protocol who reports to the HCSSA administrator and participates on the Quality Assessment and Performance Improvement (QAPI) committee.

(d) Except as provided for in subsection (e) of this section, an HCSSA licensed to provide home health or hospice services must have a registered nurse responsible for coordinating infection control protocol who reports to the HCSSA administrator and participates on the QAPI committee.

(e) An HCSSA licensed to provide only physical, occupational, speech, or respiratory therapy, medical social services, or nutritional counseling must designate a staff member to be responsible for coordinating infection control protocol who reports to the HCSSA administrator and participates on the QAPI committee.

§570.311. Determining Essential Visit.

(a) An essential visit is one that includes a service that must be delivered to ensure the client's health and safety, such as nursing services, therapies, medication administration, assisting with self-administered medications and other personal care tasks, wound care, transfer, or ambulation. Whether a visit qualifies as an essential visit is determined on a case-by-case basis and according to the client's need for the service on the day of the scheduled visit in accordance with the plan of care, care plan, or individualized service plan.

(b) A home and community support services agency (HCSSA) must determine if a scheduled home visit is an essential visit.

(1) If the scheduled home visit is not an essential visit, the visit must be:

(A) conducted by phone or video conference, if possible; or

(B) rescheduled for a later date.

(2) If the scheduled visit is an essential visit, staff must conduct the visit in person and screen the client and household members in accordance with §570.307 of this division (relating to Screening).

(3) An HCSSA must document any missed visits and notify the attending physician or practitioner, if applicable.

§570.313. Supervisory Visits by Telecommunication.

(a) A parent home and community support services agency (HCSSA) administrator or alternate administrator, or supervising nurse or alternate supervising nurse, may make the monthly supervisory visit required for branch supervision, or as required for the alternative delivery site, by virtual communication, such as video or telephone conferencing systems. An HCSSA must document each supervisory visit conducted by virtual communication and the outcome of the visit.

(b) An HCSSA may conduct required supervisory visits of staff by virtual communication, such as video or telephone conferencing systems. An HCSSA must document each supervisory visit conducted by virtual communication and the outcome of the visit.

§570.315. Client Symptoms.

(a) If a home health or hospice client reports symptoms of a communicable or infectious disease that is associated with a contagious disease outbreak, epidemic, or pandemic, the home and community support services agency (HCSSA) must coordinate care with the client's attending physician or practitioner and amend the client's plan of care or care plan as indicated.

(b) If a personal assistance services client reports symptoms of a communicable or infectious disease that is associated with a contagious disease outbreak, epidemic, or pandemic, the HCSSA must coordinate care by discussing with the client the importance of informing the client's physician or practitioner of the symptoms. The HCSSA may inform the client's physician or practitioner with the client's consent.

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

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DIVISION 2. HOSPICE AGENCIES OPERATING AN INPATIENT FACILITY

26 TAC §§570.317 - 570.319, 570.321, 570.323, 570.325, 570.327, 570.329

STATUTORY AUTHORITY

The new sections are authorized by: Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §§142.0011 and 142.012, which provide that the Executive Commissioner of HHSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents; Texas Health and Safety Code §§247.025 and 247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and ensure the

quality of care and protection of residents' health and safety, respectively; Texas Health and Safety Code §248A.101, which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 248A and protect the health, safety, and comfort of the minors serviced by a PPECC; Texas Health and Safety Code §252.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 252; Human Resources Code §103.004, which requires the Executive Commissioner of HHSC to adopt rules for implementing Chapter 103 and set standards for the health and welfare of persons attending a DAHS facility; Texas Human Resources Code §32.021, which provides that the Executive Commissioner of HHSC shall adopt rules for the proper and efficient operation of the medical assistance program; and Health and Safety Code §260B(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures; and Texas Health and Safety Code §260C(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures.

The new sections implement Texas Government Code §531.0055; Health and Safety Code §§142.0011, 142.012, 242.001, 242.037, 247.025, 247.026, 248A.101, 252.008, 260B(b), and 260C(b); and Human Resources Code §§32.021 and 103.004.

§570.317. Emergency Response to Outbreak, Epidemic, or Pandemic for Hospice Inpatient Unit.

(a) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, a hospice agency operating a hospice inpatient unit must regularly check federal, state, and local guidance.

(b) During a contagious disease outbreak, epidemic, or pandemic, a hospice agency operating an inpatient unit must maintain a 90-day supply of personal protective equipment (PPE), including surgical facemasks for aerosolized droplet protection, N95 respirators, goggles, face shields, gloves, and gowns as determined to be effective for transmission-based precautions by the CDC for the clients and residents. The 90-day supply is based on CDC burn rate methodology.

(c) A hospice agency operating an inpatient unit must provide appropriate PPE to its staff to use while providing services to agency clients.

(d) A hospice agency operating an inpatient unit must ensure clients have appropriate PPE to use during the provision of services. A client's care plan or plan of care must address the specific type of PPE to be provided to the client, which is based upon infection control needs related to the services being provided.

(e) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, a hospice inpatient unit must:

(1) maintain infection control measures when:

(A) evacuation is necessary;

(B) sheltering in place is necessary; or

(C) receiving residents evacuating from another hospice inpatient unit that has positive cases; and

(2) have transportation agreements that include an assurance that the agreement will be honored if the evacuating facility has positive cases.

(f) A hospice agency operating a hospice inpatient unit must have a communication plan to communicate the following information with clients, clients' legally authorized representatives, and family members:

(1) when a positive case is identified;

(2) current visitation and activities policies and procedures;

(3) alternate methods of visitation that will be available during times of restricted visitation; and

(4) the primary point of contact at the inpatient hospice for questions and information and how clients, clients' legally authorized representatives, and families can reach the primary point of contact.

(g) A hospice agency operating a hospice inpatient unit must:

(1) develop and enforce family education visit policies and procedures that address the contagious disease outbreak, epidemic, or pandemic that is occurring; and

(2) develop a written agreement between the hospice and the family education visitors that states that the family education visitors understand and agree to follow the applicable policies, procedures, and requirements.

(h) A hospice agency must:

(1) provide appropriate PPE to the family education visitor for use during the entirety of each family education visit, including provision of replacement PPE if the equipment becomes unusable or ineffective; and

(2) provide training for each family education visitor on proper PPE usage and infection control measures.

(i) A hospice agency operating a hospice inpatient unit must have a protocol for receiving deliveries. This protocol must comply with any CDC guidance put into place.

§570.318. Testing.

(a) During a contagious disease outbreak, epidemic, or pandemic, a hospice agency operating a hospice inpatient unit must develop a testing strategy for staff and clients, as applicable per guidance from CDC, HHSC, or DSHS. The hospice agency must ensure staff are tested or conduct testing if a test is available for the communicable or infectious disease.

(b) A hospice agency operating a hospice inpatient unit must develop a protocol for clients and staff who refuse testing.

(c) A hospice agency operating a hospice inpatient unit must:

(1) monitor clients and staff for signs and symptoms related to the contagious disease outbreak, epidemic, or pandemic;

(2) monitor clients and staff for any possible exposures; and

(3) activate outbreak infection control measures if:

(A) a positive case is identified in a client or staff;

(B) a client or staff is exhibiting symptoms related to the pandemic, outbreak, or epidemic; and

(C) there is a suspected or known exposure of a client or staff to a positive case.

§570.319. Reporting.

(a) A hospice agency operating a hospice inpatient unit must report new positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic to HHSC in accordance with any guidance issued by HHSC or DSHS.

(b) A hospice agency operating a hospice inpatient unit must comply with a request from HHSC to submit data related to positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic.

(c) A hospice agency operating a hospice inpatient unit must inform staff, clients, client representatives, client's designated emergency contacts, or responsible parties of those residing in a hospice inpatient unit by 5:00 p.m. the next calendar day following the occurrence of a confirmed infection among clients or staff. The hospice agency operating a hospice inpatient unit must not include personally identifiable information.

§570.321. Screening.

(a) A hospice agency operating a hospice inpatient unit must screen all visitors prior to allowing them to enter the hospice inpatient unit, except emergency services personnel entering the hospice inpatient unit in an emergency.

(b) Visitors or staff who meet any of the following screening criteria must leave the facility:

(1) signs or symptoms specific to the communicable or infectious disease that has caused the outbreak, epidemic, or pandemic;

(2) any other signs and symptoms as outlined by the CDC; or

(3) testing positive, indicative that the person is still in the infectious period related to the contagious disease outbreak, epidemic, or pandemic.

(c) A hospice agency operating a hospice inpatient unit must document, in writing, all persons who enter the unit in a log kept at the entrance of the unit and include the date, the person's name, current contact information, and data from the screening results. The screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(d) A hospice agency operating a hospice inpatient unit must screen all staff at the beginning of each shift prior to allowing them to enter the unit.

(e) A hospice agency operating a hospice inpatient unit must screen clients in accordance with applicable HHSC or DSHS guidance.

(f) Clients who do not pass screening must be quarantined and monitored.

(g) A hospice agency operating a hospice inpatient unit must allow persons providing critical assistance, including essential caregivers, to enter the unit if they pass the screening criteria in subsection (b) of this section. A hospice inpatient unit may not prohibit entry of persons with legal authority to enter when doing so to perform their official duties.

(h) A hospice agency operating a hospice inpatient unit must post signage at all entrances of the unit prohibiting persons from entering the unit prior to being screened.

§570.323. Staff Requirements.

(a) Each hospice agency operating a hospice inpatient unit must ensure staffing levels are adequate to meet the needs of all clients, including those in isolation and quarantine.

(b) Each hospice agency operating a hospice inpatient unit must have a staffing plan in place that:

(1) ensures staff in each area of the unit are trained to provide care to clients in their assigned cohort area;

(2) ensures supervision of staff in each area of the unit;

(3) includes a staffing contingency plan to ensure adequate staffing in the event multiple staff are unable to work due to illness;

(4) requires staff be assigned to client cohorts as necessary to ensure transmission-based precautions for clients in isolation and quarantine; and

(5) documents staffing shortage mitigation activities.

(c) Each hospice agency operating a hospice inpatient unit must ensure that the hospice inpatient unit infection control protocols are developed and reviewed by the infection control coordinator.

(d) Each hospice agency operating a hospice inpatient unit must document that training was provided to each staff member and that the training topics included:

(1) providing care to clients in isolation;

(2) providing care to clients in quarantine;

(3) proper use of personal protective equipment (PPE) including appropriate PPE use for:

(A) each area of the unit;

(B) providing care to clients who are negative status, positive status, and unknown status; and

(C) providing care to clients exhibiting symptoms and awaiting test results;

(4) proper donning, doffing, and use of PPE;

(5) proper cleaning and disinfecting procedures;

(6) the unit's infection control plans;

(7) the unit's emergency preparedness plans;

(8) standard assessment protocols; and

(9) enhanced assessment protocols to be implemented when quarantine or isolation are necessary.

§570.325. Visitation.

(a) A hospice agency operating a hospice inpatient unit's visitation policies and procedures may change during a contagious disease outbreak, epidemic, or pandemic in response to directives issued by the CDC, HHSC, or DSHS. A hospice agency operating a hospice inpatient unit's policies and procedures may not be more restrictive than directives issued by the CDC, HHSC, DSHS, executive orders, or local orders.

(b) A hospice agency operating a hospice inpatient unit must permit clergy to visit a resident at the request of the resident.

(c) A hospice agency operating a hospice inpatient unit may not prohibit a client from receiving in-person visitation with a religious counselor during a public health emergency on request from the client, client's legally authorized representative (LAR), or client's family member. A hospice agency operating a hospice inpatient unit may prohibit in-person visitation with a religious counselor if a federal law or a federal agency requires the facility to prohibit in-person visitation during a public health emergency.

(d) A hospice agency operating a hospice inpatient unit must adopt policies and procedures for in-person visitation with a religious counselor during a contagious disease outbreak, epidemic, or pandemic. These policies and procedures:

(1) must comply with the minimum health and safety requirements for in-person visitation with religious counselors developed by HHSC;

(2) may include reasonable time, place, and manner restrictions on in-person visitation with religious counselors to:

(A) mitigate the spread of a communicable disease; and

(B) address the resident's medical condition;

(3) must include special consideration for residents receiving end of life care; and

(4) may require religious counselors to comply with a hospice agency operating a hospice inpatient unit's guidelines, policies, and procedures for in-person visitation with a religious counselor.

(e) A hospice agency operating a hospice inpatient unit may allow salon services visits. A facility must establish policies and procedures in response to a contagious disease outbreak, epidemic, or pandemic, based on guidance issued by the CDC, HHSC, or DSHS that provide conditions for a salon visit to occur.

(f) A hospice agency operating a hospice inpatient unit must permit end of life visits and immediately communicate any changes in a resident's condition that would qualify the resident for end of life visits to the resident's representative or resident's legally authorized representative.

§570.327. Essential Caregiver Visits.

(a) A resident or the resident's legally authorized representative (LAR), if the resident is unable, has the right to designate an essential caregiver.

(b) A hospice agency operating a hospice inpatient unit must permit essential caregiver visits.

(c) A hospice agency operating a hospice inpatient unit must develop a visitation policy that permits an essential caregiver to visit the resident for at least two hours each day.

(d) A hospice agency operating a hospice inpatient unit must have procedures in place to enable physical contact between the resident and the essential caregiver.

(e) A hospice agency operating a hospice inpatient unit must develop safety protocols for essential caregiver visits. The safety protocols may not be more stringent for essential caregivers than safety protocols for staff.

(f) A hospice agency operating a hospice inpatient unit must obtain the signature of the essential caregiver certifying that the essential caregiver will follow the facility's safety protocols for essential caregiver visits.

(g) A hospice agency operating a hospice inpatient unit may revoke an essential caregiver designation if the caregiver violates the facility's safety protocols or rules adopted under this chapter.

(h) If a hospice agency operating a hospice inpatient unit revokes a person's designation as an essential caregiver under subsection (g) of this section:

(1) the resident or the resident's LAR has the right to immediately designate another person as the essential caregiver;

(2) within 24 hours after the revocation, the hospice agency operating a hospice inpatient unit must inform the resident or the resident's LAR, in writing, of the right to appeal the revocation and the with the Texas Health and Human Services Commission (HHSC) Appeals Division by:

(A) email at OCC Appeals ContestedCases@hhs.texas.gov; or

(B) mail at HHSC Appeals Division, P.O. Box 149030, MC W-613, Austin, TX 78714-9030; and

(3) the hospice agency operating a hospice inpatient unit must comply with a hearing officer's decision regarding an appeal of an essential caregiver revocation.

(i) A hospice agency operating a hospice inpatient unit may petition HHSC to suspend in-person essential caregiver visits for no more than seven consecutive calendar days if in-person visitation poses a serious community health risk. A hospice agency operating a hospice inpatient unit may request an extension from HHSC to suspend in-person essential caregiver visitation beyond the hospice agency operating a hospice inpatient unit's original request, but HHSC may not approve an extension for a period that exceeds seven days and a hospice agency operating a hospice inpatient unit must separately request each extension. HHSC may deny the hospice agency operating a hospice inpatient unit's original request to suspend in-person essential caregiver visitation or the hospice agency operating a hospice inpatient unit's extension request if HHSC determines that in-person visitation does not pose a serious community health risk.

(j) A hospice agency operating a hospice inpatient unit may not suspend in-person essential caregiver visits in a calendar year for a time period that:

(1) is more than 14 consecutive days; or

(2) is more than a total of 45 days.

§570.329. Temporary Partial or Full Closure to Allow for Space to be Used to Treat Non-Hospice Clients in an Emergency.

(a) A hospice agency operating an inpatient unit may temporarily fully or partially close to allow space to be used by a hospital for overflow services provided to infectious patients who are not hospice clients.

(b) The hospice agency must notify the HHSC Regional Office of its plans for partial or full closure and plans to reclaim the space.

(c) The hospice agency must not provide services to non-hospice clients in the shared space.

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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SUBCHAPTER E. PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

26 TAC §§570.401, 570.403, 570.405, 570.407, 570.409, 570.411

STATUTORY AUTHORITY

The new sections are authorized by: Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of ser-

vices by the health and human services agencies; Texas Health and Safety Code §§142.0011 and 142.012, which provide that the Executive Commissioner of HHSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents; Texas Health and Safety Code §§247.025 and 247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and ensure the quality of care and protection of residents' health and safety, respectively; Texas Health and Safety Code §248A.101, which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 248A and protect the health, safety, and comfort of the minors serviced by a PPECC; Texas Health and Safety Code §252.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 252; Human Resources Code §103.004, which requires the Executive Commissioner of HHSC to adopt rules for implementing Chapter 103 and set standards for the health and welfare of persons attending a DAHS facility; Texas Human Resources Code §32.021, which provides that the Executive Commissioner of HHSC shall adopt rules for the proper and efficient operation of the medical assistance program; and Health and Safety Code §260B(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures; and Texas Health and Safety Code §260C(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures.

The new sections implement Texas Government Code §531.0055; Health and Safety Code §§142.0011, 142.012, 242.001, 242.037, 247.025, 247.026, 248A.101, 252.008, 260B(b), and 260C(b); and Human Resources Code §§32.021 and 103.004.

§570.401. Emergency Response to Outbreak, Epidemic, or Pandemic.

(a) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, a prescribed pediatric extended care center (PPECC) must regularly check federal, state, and local guidance.

(b) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, a PPECC must:

(1) maintain infection control measures; and

(2) maintain an adequate supply of personal protective equipment (PPE), including facemasks for droplet protection, N95 masks, goggles, face shields, gloves, and gowns.

(c) A PPECC must have protocol for receiving deliveries. This protocol must comply with any CDC guidance put into place.

(d) Each PPECC must have a communication plan to communicate the following information with minors, minors' representatives, and families:

(1) when a positive case is identified by the PPECC;

(2) current visitation and activities policies and procedures; and

(3) the primary point of contact at the PPECC for questions and information and how minors, minor representatives, and families can reach the primary point of contact.

§570.403. Testing.

(a) During a contagious disease outbreak, epidemic, or pandemic, a prescribed pediatric extended care center (PPECC) must conduct routine testing of all staff and minors per guidance from the HHSC or DSHS.

(b) The PPECC must develop protocol for minors and staff who refuse testing.

(c) The PPECC must:

(1) monitor minors and staff for signs and symptoms;

(2) monitor minors and staff for any possible exposure; and

(3) activate outbreak infection control measures if:

(A) a positive case is identified in a minor or staff;

(B) a minor or staff is exhibiting related symptoms; or

(C) there is a suspected or known exposure of a minor or staff to a positive case.

§570.405. Reporting.

(a) A prescribed pediatric extended care center (PPECC) must report new positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic to HHSC in accordance with any guidance issued by HHSC or the DSHS.

(b) An PPECC must comply with a request from HHSC to submit data related to positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic.

(c) A PPECC must inform center staff, minors, minor's representatives, minor's designated emergency contacts, or responsible parties of those attending a PPECC by 5:00 p.m. the next calendar day following the occurrence of a confirmed infection among clients or staff. The PPECC must not include personally identifiable information.

§570.407. Screening.

(a) A prescribed pediatric extended care center (PPECC) must screen all visitors prior to allowing them to enter the PPECC, except emergency services personnel entering the center in an emergency. Visitors who do not pass screening must not enter the PPECC.

(b) The following screening criteria shall be used for visitors, staff, and minors:

(1) signs or symptoms specific to the contagious disease that caused the outbreak, epidemic, or pandemic;

(2) any other signs and symptoms as outlined by the CDC; or

(3) testing positive, indicating that the person is still in the infectious period related to the contagious disease outbreak, epidemic, or pandemic.

(c) A PPECC must document, in writing, all persons who enter the building in a log kept at the entrance of the center and include the date, the person's name, current contact information, and data from the screening. The screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(d) A PPECC must screen all staff at the beginning of each shift prior to their entering the center in accordance with subsection (b) of this section.

(e) Staff who do not pass screening must leave the PPECC and not return until they are not infectious or until they meet the criteria to discontinue quarantine or isolation.

(f) A PPECC must screen minors in accordance with applicable HHSC or DSHS guidance.

(g) Minors who do not pass screening must be isolated until they can leave the PPECC.

(h) A PPECC must allow persons providing critical assistance to enter the PPECC if they pass the screening criteria in subsection (b) of this section. A PPECC may not prohibit entry of persons with legal authority to enter when performing their official duties.

(i) A PPECC must post signage at all entrances of the PPECC prohibiting persons from entering the PPECC prior to being screened.

§570.409. Staff Requirements.

(a) Each prescribed pediatric extended care center (PPECC) must have a staffing plan in place that includes a staffing contingency plan to ensure adequate staffing in the event multiple staff are out due to illness.

(b) Each PPECC must have at least one staff member responsible for infection control protocol.

(c) Each PPECC must document that training was provided to each staff member and that the training topics included:

(1) isolation protocols for minors who begin to show signs and symptoms while at the PPECC;

(2) proper use of personal protective equipment (PPE) including appropriate PPE use for:

(A) each area of the center;

(B) providing care to minors who are negative status, positive status, and unknown status; and

(C) providing care to minors exhibiting symptoms and awaiting test results;

(3) proper donning, doffing, and use of PPE;

(4) proper cleaning and disinfecting procedures;

(5) the PPECC's infection control plans;

(6) the PPECC's emergency preparedness plans;

(7) standard assessment protocols; and

(8) enhanced assessment protocols to be implemented when isolation of a minor is necessary.

§570.411. Visitation.

(a) A Prescribed Pediatric Extended Care Center (PPECC) visitation policies and procedures may change in response during a contagious disease outbreak, epidemic, or pandemic in response to directives issued by the CDC, HHSC, DSHS, executive orders, or local orders. A PPECC's visitation policies and procedures may not be more restrictive than directives issued by the CDC, HHSC, DSHS, or local orders.

(b) A PPECC must permit clergy to visit a minor at the request of the minor, minor's parent, or minor's guardian.

(c) A PPECC may prohibit in-person visitation with a religious counselor during a public health emergency if a federal law or federal HCSSA requires the facility to prohibit in-person visitation during that 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.

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SUBCHAPTER F. NURSING FACILITIES

26 TAC §§570.501, 570.503, 570.505, 570.507, 570.509, 570.511, 570.513 - 570.515, 570.517

STATUTORY AUTHORITY

The new sections are authorized by: Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §§142.0011 and 142.012, which provide that the Executive Commissioner of HHSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents; Texas Health and Safety Code §§247.025 and 247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and ensure the quality of care and protection of residents' health and safety, respectively; Texas Health and Safety Code §248A.101, which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 248A and protect the health, safety, and comfort of the minors serviced by a PPECC; Texas Health and Safety Code §252.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 252; Human Resources Code §103.004, which requires the Executive Commissioner of HHSC to adopt rules for implementing Chapter 103 and set standards for the health and welfare of persons attending a DAHS facility; Texas Human Resources Code §32.021, which provides that the Executive Commissioner of HHSC shall adopt rules for the proper and efficient operation of the medical assistance program; and Health and Safety Code §260B(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures; and Texas Health and Safety Code §260C(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities in

establishing in-person religious counselor visitation policies and procedures.

The new sections implement Texas Government Code §531.0055; Health and Safety Code §§142.0011, 142.012, 242.001, 242.037, 247.025, 247.026, 248A.101, 252.008, 260B(b), and 260C(b); and Human Resources Code §§32.021 and 103.004.

§570.501. Planning for Outbreak, Epidemic, or Pandemic.

(a) A nursing facility (NF) must ensure the infection prevention and control program required by §554.1601(b) of this title (relating to Infection Control) includes information specific to emerging contagious diseases, epidemics, and pandemics, including:

(1) preparation, which must address:

(A) obtaining and maintaining a 90-day supply of personal protective equipment (PPE), including surgical face masks for droplet protection, N95 respirators, goggles or face shields, gloves, and gowns;

(B) training staff on infection control plans no later than 24 hours after identification of a contagious disease outbreak, epidemic, or pandemic;

(C) providing more staff in times of outbreak; and

(D) dedicating staff for various resident populations: residents with positive status, residents with negative status, and residents with unknown status;

(2) staff training, which must address:

(A) which PPE is appropriate for use in each area of a NF and by staff when providing care to residents with positive status, residents with negative status, and residents with unknown status;

(B) donning, doffing, and use of PPE;

(C) cleaning and disinfecting policies and procedures based on the risk of transmission of the disease-causing agent and in accordance with CDC guidance on environmental cleaning and disinfection for the disease-causing agent; and

(D) contingency plans for staffing shortages due to staff illness;

(3) rapid detection, which must address:

(A) screening and monitoring;

(B) testing; and

(C) contact tracing;

(4) mitigation, which must address:

(A) isolation plans for residents with new cases of the contagious disease, including designated cohorting areas;

(B) quarantine plans for residents with unknown status, including designated cohorting areas, according to CDC guidance;

(C) designated staff assigned to work with each cohort whose designation does not change from one day to another, unless required to maintain adequate staffing for a cohort;

(D) increased staffing for quarantine and isolation groups; and

(E) plans related to staff working at multiple facilities;

(5) PPE, which must address:

(A) maintaining a 90-day supply of all CDC-recommended PPE including the PPE required by paragraph (1)(A) of this subsection and any other PPE recommended by the CDC for a specific disease or disease-causing agent;

(B) the NF's burn rate methodology used to calculate how much PPE is needed for 90 days; and

(C) who to contact if supplies are needed or difficult to obtain, including contact information; and

(6) cleaning and disinfecting, which must address:

(A) janitorial staff;

(B) cleaning and disinfecting procedures for:

(i) each area in the NF;

(ii) each type of surface;

(iii) equipment that must be used for more than one resident;

(iv) laundry; and

(C) deep cleaning, to include increased frequency for all housekeeping activities.

(b) A NF must develop infection prevention and control policies and procedures, which include:

(1) testing in accordance with applicable HHSC, DSHS, and CDC guidance, which must address:

(A) routine testing of all staff;

(B) testing of residents and staff during a contagious disease outbreak in the NF;

(C) testing of residents and staff with signs and symptoms of infection; and

(D) protocols for residents and staff who refuse testing.

(2) Ensuring a resident's rights in each area of a NF, including:

(A) the right to be informed of his or her contagious disease status;

(B) the right to be informed of any symptoms or cases of the contagious disease in the facility;

(C) the right to personal visits, including virtual visits, based on the resident's contagious disease status and guidance from CDC, Centers for Medicare and Medicaid Services (CMS), HHSC, or DSHS;

(D) the right for married residents to choose not to physically distance from their spouse, if both spouses consent;

(E) the right to refuse testing after receiving an explanation of the necessary precautions for residents who refuse; and

(F) the right of residents to leave the facility.

(3) Promotion of socialization and prevention of isolation, in accordance with CDC guidance, which must address:

(A) preventing unnecessary isolation or quarantine;

(B) ensuring that residents are not unnecessarily confined to their rooms;

(C) identifying and regularly facilitating activities that promote resident socialization in accordance with resident preferences; and

(D) preventing misuse of antipsychotic medications for residents experiencing negative psychological effects from infection prevention and control measures, including training for staff to identify environmental factors that cause psychological stress.

(c) A NF must ensure that emergency preparedness plans required by §554.1914 of this title (relating to Emergency Preparedness and Response) address emerging contagious diseases, epidemics, and pandemics, including:

(1) maintaining infection control measures if evacuation is necessary;

(2) maintaining infection control measures if sheltering in place is necessary;

(3) maintaining infection control measures when the NF is contracted or agrees to receive evacuating residents; and

(4) ensuring the PPE supplies recommended by the CDC, including face masks for droplet protection, N95 respirators, goggles or face shields, gloves, and gowns, are maintained and available if evacuation is necessary.

§570.503. Emergency Response to Outbreak, Epidemic, or Pandemic.

(a) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, a nursing facility (NF) must have a plan for regularly monitoring for and implementing federal, state, and local guidance related to the contagious disease outbreak, epidemic, or pandemic.

(b) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, a NF must:

(1) maintain infection prevention and control measures if evacuation is necessary;

(2) maintain infection prevention and control measures if sheltering in place is necessary;

(3) maintain infection prevention and control measures if acting as a receiving NF for residents evacuating from other facilities; and

(4) ensure personal protective equipment (PPE) supplies recommended by the CDC, including face masks for droplet protection, N95 respirators, goggles, face shields, gloves, and gowns are maintained and available if evacuation is necessary.

(c) A NF must have a protocol for receiving deliveries. This protocol must comply with any CDC guidance in place.

(d) Each NF must develop and implement a communication plan to communicate the following information to current and prospective residents, residents' representatives, each resident's designated emergency contact, and all NF staff:

(1) when a resident or staff member with a positive case of the contagious disease is identified by the NF;

(2) infection control policies, including cohorting and quarantine protocols;

(3) current visitation and activities policies and procedures; and

(4) alternate methods of visitation that will be available during times of restricted visitation.

(e) A NF must have a plan to address how the facility will communicate with residents, residents' representatives, and a resident's designated emergency contact. The plan must also include:

(1) frequency of communications when there is a contagious disease outbreak;

(2) the primary point of contact at the NF for questions and information;

(3) how residents, resident representatives, and resident's designated emergency contact can contact the primary point of contact; and

(4) the method of communication a NF will use to communicate changes in visitation policies at the NF.

§570.505. Testing.

(a) During a contagious disease outbreak, epidemic, or pandemic, a nursing facility (NF) must conduct routine testing, if testing is available, of all staff and residents for the disease causing the outbreak, epidemic, or pandemic in accordance with guidance issued by the Centers for Medicare and Medicaid Services (CMS), CDC, HHSC, or DSHS.

(b) During a contagious disease outbreak, a NF must test all residents and staff with signs and symptoms of the illness, if testing is available, in accordance with guidance issued by CMS, CDC, HHSC, or DSHS.

(c) A NF must develop and implement protocols for residents and staff who refuse testing.

(d) A NF must:

(1) monitor residents and staff for signs and symptoms of the disease causing the outbreak, epidemic, or pandemic;

(2) monitor residents and staff for any possible exposures to the disease causing the outbreak, epidemic, or pandemic; and

(3) activate the infection prevention and control program specific to emerging contagious diseases, epidemics, and pandemics required by §570.501 of this subchapter (relating to Planning for Outbreak, Epidemic, or Pandemic) if:

(A) a positive case of the disease causing the outbreak, epidemic, or pandemic is identified in a resident or staff;

(B) a resident or staff is exhibiting symptoms of the disease causing the outbreak, epidemic, or pandemic; or

(C) there is a suspected or known exposure of a resident or staff to a person with a positive case of the disease causing the outbreak, epidemic, or pandemic.

§570.507. Reporting.

(a) A nursing facility (NF) must report new positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic to HHSC in accordance with any guidance issued by HHSC or the DSHS.

(b) A NF must comply with a request from HHSC to submit data related to cases of the contagious disease in the facility.

(c) A NF must inform residents, resident representatives, and the families of residents by 5:00 p.m. the next calendar day following the occurrence of a positive case of the contagious disease among residents or staff. The NF must not include personally identifiable information in such information.

§570.509. Screening.

(a) During a contagious disease outbreak, epidemic, or pandemic, a nursing facility (NF) must screen all visitors prior to allowing them to enter the NF, except emergency services personnel entering the NF or facility campus in an emergency. Visitor screenings must be documented in a log kept at the entrance to the NF, which must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law. Visitors who fail the screening must not enter the NF.

(b) The following screening criteria shall be used for visitors, staff, and residents:

(1) signs or symptoms specific to the contagious disease that has caused the outbreak, epidemic, or pandemic;

(2) any other signs and symptoms as outlined by the CDC; or

(3) testing positive, indicating that the visitor is still in the infectious period related to the contagious disease outbreak, epidemic, or pandemic.

(c) A NF must screen all staff at the beginning of each shift for the criteria in subsection (b) of this section prior to allowing them to enter the NF.

(d) Staff who do not pass screening must immediately leave the NF and not return until it is confirmed that they are not infectious or until they meet the criteria to discontinue quarantine or isolation.

(e) During a contagious disease outbreak, epidemic, or pandemic, a NF must screen residents at least once per day for the criteria in subsection (b) of this section. Residents who do not pass screening must be quarantined immediately, monitored, and tested according to any guidance issued by the CDC, HHSC, or DSHS. A resident has the right to refuse testing.

(f) A NF must allow persons providing critical assistance, including essential caregivers, to enter the NF if they pass the screening criteria in subsection (b) of this section.

(g) A NF may not prohibit entry of persons with legal authority to enter when performing their official duties, unless they do not pass the screening in subsection (b) of this section.

(h) A NF must post signage at all entrances of the facility prohibiting persons, other than emergency services personnel providing emergency services, from entering the facility prior to being screened.

§570.511. Staff Requirements.

(a) A nursing facility (NF) must maintain adequate staffing to meet the needs of all residents, including those in isolation and quarantine.

(b) A NF must have a staffing plan in place that includes the following:

(1) staff designated to each area of the NF;

(2) staff in each area of the NF are trained to provide care to residents in their assigned area;

(3) supervision of staff in each area of the NF;

(4) during a contagious disease outbreak, epidemic, or pandemic, staff who work in multiple facilities are assigned to the same cohort in each facility they work in; and

(5) a staffing contingency plan to maintain adequate staffing in the event multiple staff are out due to illness.

(c) A NF must provide training to each staff member and document the training. The training must include:

(1) providing care to residents in isolation;

(2) providing care to residents in quarantine;

(3) proper use of personal protective equipment (PPE) including appropriate PPE use for:

(A) each area of the NF;

(B) providing care to residents who are negative status, positive status, or unknown status; and

(C) providing care to residents exhibiting symptoms and awaiting test results;

(4) proper donning, doffing, and use of PPE;

(5) proper cleaning and disinfecting procedures;

(6) the NF's infection control plans;

(7) the NF's emergency preparedness plans;

(8) standard assessment protocols; and

(9) enhanced assessment protocols to be implemented when quarantine or isolation are necessary.

§570.513. Visitation.

(a) A nursing facility's visitation policies and procedures may change during a contagious disease outbreak, epidemic, or pandemic in response to directives issued by the Centers for Medicare and Medicaid Services (CMS), HHSC, or DSHS. Nursing facility (NF) visitation policies and procedures may not be more restrictive than directives issued by CMS, HHSC, DSHS, executive orders, or local orders.

(b) A NF must permit clergy to visit a resident at the request of the resident.

(c) A NF may not prohibit a resident from receiving in-person visitation with a religious counselor during a public health emergency on request from the resident, resident's legally authorized representative (LAR), or resident's family member. A NF may prohibit in-person visitation with a religious counselor if a federal law or a federal agency requires the facility to prohibit in-person visitation during a public health emergency.

(d) A NF must adopt policies and procedures for in-person visitation with a religious counselor during a contagious disease outbreak, epidemic, or pandemic. These policies and procedures:

(1) must comply with the minimum health and safety requirements for in-person visitation with religious counselors developed by HHSC;

(2) may include reasonable time, place, and manner restrictions on in-person visitation with religious counselors to:

(A) mitigate the spread of a communicable disease; and

(B) address the resident's medical condition;

(3) must include special consideration for residents receiving end of life care; and

(4) may require religious counselors to comply with a NF's guidelines, policies, and procedures for in-person visitation with a religious counselor.

(e) A NF may allow salon services visits. A NF must establish policies and procedures in response to a contagious disease outbreak, epidemic, or pandemic, based on guidance issued by CDC,

CMS, HHSC, or DSHS, that provide conditions for a salon services visit to occur.

(f) A NF must permit end of life visits and immediately communicate any changes in a resident's condition that would qualify the resident for end of life visits to the resident representative.

§570.514. Essential Caregiver Visits.

(a) A resident or the resident's legally authorized representative (LAR), if the resident is unable, has the right to designate at least one essential caregiver.

(b) A nursing facility (NF) must permit essential caregiver visits.

(c) A NF must allow essential caregiver visits to occur outdoors, in the resident's bedroom when possible, or in another area upon request by a resident or resident's LAR.

(d) A NF must develop a visitation policy that permits an essential caregiver to visit the resident for at least two hours each day.

(e) A NF must have procedures in place to enable physical contact between the resident and the essential caregiver.

(f) A NF must develop safety protocols for essential caregiver visits. The safety protocols may not be more stringent for essential caregivers than safety protocols for staff.

(g) A NF must obtain the signature of the essential caregiver certifying that the essential caregiver will follow the NF's safety protocols for essential caregiver visits.

(h) A NF may revoke an essential caregiver designation if the caregiver violates the NF's safety protocols or rules adopted under this chapter.

(i) If A NF revokes a person's designation as an essential caregiver under subsection (h) of this section:

(1) the resident or the resident's LAR has the right to immediately designate another person as the essential caregiver;

(2) within 24 hours after the revocation, the facility must inform the resident or the resident's LAR, in writing, of the right to appeal the revocation and the procedures for filing an appeal with the Texas Health and Human Services Commission (HHSC) Appeals Division by:

(A) email at OCC_Appeals_ContestedCases@hhs.texas.gov; or

(B) mail at HHSC Appeals Division, P.O. Box 149030, MC W-613, Austin, TX 78714-9030; and

(3) the NF must comply with a hearing officer's decision regarding an appeal of an essential caregiver revocation.

(j) A NF may petition HHSC to suspend in-person essential caregiver visits for no more than seven consecutive calendar days if in-person visitation poses a serious community health risk. A NF may request an extension from HHSC to suspend in-person essential caregiver visitation beyond the NF's original request, but HHSC may not approve an extension for a period that exceeds seven days and a NF must separately request each extension. HHSC may deny the NF's original request to suspend in-person essential caregiver visitation or the NF's extension request if HHSC determines that in-person visitation does not pose a serious community health risk.

(k) A NF may not suspend in-person essential caregiver visits in a calendar year for a time period that:

(1) is more than 14 consecutive days; or

(2) is more than a total of 45 days.

§570.515. Resident Assessment and Monitoring.

(a) During a contagious disease outbreak, epidemic, or pandemic, a nursing facility (NF) must continue to conduct resident assessments according to §554.801 of this title (relating to Resident Assessment).

(b) A NF must have a plan to increase the frequency of resident monitoring for signs and symptoms of the disease-causing agent when a positive case of the contagious disease in a resident or staff is identified in the NF.

(c) An assessment must address a resident's physical, mental, and psychosocial well-being and needs during the contagious disease outbreak, epidemic, or pandemic.

(d) A NF must update the baseline or comprehensive care plan for a resident according to §554.802 of this title (relating to Comprehensive Person-Centered Care Planning).

(1) The updated care plan must address a resident's physical, mental and psychosocial needs.

(2) The updated care plan must address both virtual visitation and in-person visitation, including frequency of such visits, based on the resident's assessment required by subsection (a) of this section, and according to §554.413 of this title (relating to Access and Visitation Rights).

§570.517. Continuity of Facility Operations.

(a) A nursing facility (NF) must have policies and procedures to accomplish the following:

(1) designating an isolation area for residents with a contagious disease;

(2) designating a quarantine area for residents with unknown status;

(3) designating an area for residents who do not require isolation or quarantine;

(4) designating an area for the storage of personal protective equipment (PPE), an area for donning PPE, and an area for doffing PPE;

(5) implementing infection prevention and control for shared spaces in areas of A NF that do not include a separate nursing service area, including a nurses' station, a staff lounge area and restroom, lockers or security compartments for the safekeeping of the personal effects of staff, a clean utility room, and a soiled utility room;

(6) ensuring enough space for physical distancing needs related to the contagious disease outbreak, epidemic, or pandemic; and

(7) designating entrances and exits for each area, as well as travel routes to minimize spread of contagious diseases.

(b) If a NF identifies a contagious disease outbreak, epidemic, or pandemic, it must take the following precautions for communal dining:

(1) If staff assistance is required during dining, a NF must ensure staff use appropriate PPE and hand hygiene between assisting each resident.

(2) A NF must ensure cleaning and disinfection of all surfaces, furniture, and items that might be used by more than one person between every use of the communal dining area, according to CDC guidance.

(3) A NF must limit participation in communal dining to residents who do not have an active infection or who are not in quarantine.

(4) A NF must ensure furniture and seating are arranged to maintain a physical distance as needed related to the contagious disease outbreak, epidemic, or pandemic. A NF must take into consideration preferences for married residents, who may choose not to physically distance.

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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Health and Human Services Commission
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SUBCHAPTER G. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

26 TAC §§570.601, 570.603, 570.605, 570.607, 570.609, 507.611, 570.613

STATUTORY AUTHORITY

The new sections are authorized by: Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §§142.0011 and 142.012, which provide that the Executive Commissioner of HHSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents; Texas Health and Safety Code §§247.025 and 247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and ensure the quality of care and protection of residents' health and safety, respectively; Texas Health and Safety Code §248A.101, which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 248A and protect the health, safety, and comfort of the minors serviced by a PPECC; Texas Health and Safety Code §252.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 252; Human Resources Code §103.004, which requires the Executive Commissioner of HHSC to adopt rules for implementing Chapter 103 and set standards for the health and welfare of persons attending a DAHS facility; Texas Human Resources Code §32.021, which provides that the Executive Commissioner of HHSC shall adopt rules for the proper and efficient operation of the medical assistance program; and Health and Safety Code §260B(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures; and Texas Health and Safety Code §260C(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures.

The new sections implement Texas Government Code §531.0055; Health and Safety Code §§142.0011, 142.012, 242.001, 242.037, 247.025, 247.026, 248A.101, 252.008, 260B(b), and 260C(b); and Human Resources Code §§32.021 and 103.004.

§570.601. Emergency Response to Outbreak, Epidemic, or Pandemic.

(a) This subchapter applies to an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID) licensed under Chapter 551 of this title (relating to Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions) or exempt from licensure under Texas Health and Safety Code §252.003.

(b) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, an ICF/IID must regularly check federal, state, and local guidance.

(c) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, an ICF/IID must:

(1) maintain infection control measures when:

(A) evacuation is necessary;

(B) sheltering in place is necessary; or

(C) receiving individuals evacuating from another facility that has positive cases;

(2) have a transportation plan;

(3) maintain a 90-day supply of personal protective equipment (PPE), including facemasks for droplet protection, N95 masks, goggles, face shields, gloves, and gowns. Each facility determines what a 90-day supply is based on the CDC burn rate methodology; and

(4) ensure PPE for staff and individuals is available in the event of an evacuation.

(d) An ICF/IID must have protocol for receiving deliveries. This protocol must comply with any CDC guidance in place.

(e) An ICF/IID must have a communication plan to communicate the following information with individuals, individuals' representatives, and families:

(1) when a positive case is identified by the facility;

(2) current visitation and activities policies and procedures;

(3) alternate methods of visitation that will be available during times of restricted visitation; and

(4) the primary point of contact at the facility for questions and information and how individuals, an individuals' representatives, and families can reach the primary point of contact.

§570.603. Testing.

(a) During a contagious disease outbreak, epidemic, or pandemic, the intermediate care facility must have a testing strategy for all staff and individuals if required by the CDC, HHSC, or DSHS.

(b) An intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID) must develop a protocol for individuals and staff who refuse testing.

(c) An ICF/IID must:

(1) screen individuals and staff for signs and symptoms;

(2) screen individuals and staff for any possible exposures; and

(3) activate outbreak infection control measures if:

(A) a positive case is identified in an individual or staff;

(B) an individual or staff is exhibiting related symptoms; and

(C) there is a suspected or known exposure of an individual or staff to a positive case.

§570.605. Reporting.

(a) An intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID) must report new positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic to HHSC in accordance with any guidance issued by HHSC or the DSHS.

(b) An ICF/IID must comply with a request from HHSC to submit data related to positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic.

(c) An ICF/IID must inform facility staff, individuals, individual's representatives, individual's designated emergency contacts, or responsible parties of those residing in facilities by 5:00 p.m. the next calendar day following the occurrence of a confirmed infection among individuals or staff. The ICF/IID must not include personally identifiable information.

§570.607. Screening.

(a) An intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID) must screen all visitors prior to allowing them to enter the ICF/IID, except emergency services personnel entering the ICF/IID or ICF/IID campus in an emergency. Visitors who fail the screening must not enter the ICF/IID.

(b) The following screening criteria shall be used for visitors, staff, and individuals:

(1) signs or symptoms specific to the contagious disease that has caused the outbreak, epidemic, or pandemic;

(2) any other signs and symptoms as outlined by the CDC; or

(3) testing positive, indicative that the person is still in the infectious period related to the contagious disease outbreak, epidemic, or pandemic.

(c) An ICF/IID must document, in writing, all persons who enter the building in a log kept at the entrance of the ICF/IID and include the date, the person's name, current contact information, and data from the screening. The screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(d) An ICF/IID must screen all staff at the beginning of each shift prior to allowing them to enter the ICF/IID in accordance with subsection (b) of this section.

(e) Staff who do not pass screening must leave the ICF/IID and not return until it is confirmed that they are not infectious or until they meet the criteria to discontinue quarantine or isolation.

(f) An ICF/IID must screen individuals in accordance with guidance from HHSC or DSHS.

(g) Individuals who do not pass screening or refuse to be screened must be quarantined and monitored in accordance with HHSC, DSHS, and CDC guidance.

(h) An ICF/IID must allow persons providing critical assistance to enter the facility, including essential caregivers, if they pass the screening criteria in subsection (b) of this section. An ICF/IID may not prohibit entry of persons with legal authority to enter when performing their official duties.

(i) An ICF/IID must post signage at all entrances of the ICF/IID reminding individuals not to enter the ICF/IID prior to being screened.

§570.609. Staff Requirements.

(a) Each intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID) must ensure staffing levels are adequate to meet the needs of all individuals, including those in isolation and quarantine.

(b) Each ICF/IID must have a staffing plan in place that:

(1) ensures staff are trained to provide care to individuals in their assigned cohort;

(2) ensures supervision of staff in each cohort of the ICF/IID; and

(3) includes a staffing contingency plan to ensure adequate staffing in the event multiple staff are out due to illness.

(c) Each ICF/IID must have at least one staff member responsible for coordinating infection control protocol.

(d) Each ICF/IID must document that training was provided to each staff member and the training topics included:

(1) providing care to individuals in isolation;

(2) providing care to individuals in quarantine;

(3) proper use of personal protective equipment (PPE) including appropriate PPE use for:

(A) each area of the facility;

(B) providing care to individuals who are negative status, positive status, and unknown status; and

(C) providing care to residents exhibiting symptoms and awaiting test results;

(4) proper donning and doffing of PPE;

(5) proper cleaning and disinfecting procedures;

(6) the ICF/IID's infection control plans; and

(7) the ICF/IID's emergency preparedness plans.

§570.611. Visitation.

(a) An intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID) visitation policies

and procedures may change during a contagious disease outbreak, epidemic, or pandemic in response to directives issued by the CDC, DSHS, or HHSC. ICF/IID visitation policies and procedures may not be more restrictive than directives issued by the CDC, HHSC, DSHS, executive orders, or local orders.

(b) An ICF/IID must permit clergy to visit an individual at the request of the individual.

(c) An ICF/IID may prohibit in-person visitation with a religious counselor during a public health emergency if a federal law or federal agency requires the facility to prohibit in-person visitation during that period.

(d) An ICF/IID may allow salon services visits. An ICF/IID must establish policies and procedures in response to a contagious disease outbreak, epidemic, or pandemic based on guidance issued by the CDC, HHSC, or DSHS that provide conditions for a salon visit to occur.

(e) An ICF/IID must permit end of life visits and immediately communicate any changes in an individual's condition that would qualify the individual for end of life visits to the individual's representative.

§570.613. Essential Caregiver Visits.

(a) An individual, or the individual's legally authorized representative (LAR), if the individual is unable, has the right to designate an essential caregiver.

(b) An intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID) must permit essential caregiver visits.

(c) An ICF/IID must develop a visitation policy that permits an essential caregiver to visit the individual for at least two hours each day.

(d) An ICF/IID must have procedures in place to enable physical contact between the individual and the essential caregiver.

(e) An ICF/IID must develop safety protocols for essential caregiver visits. The safety protocols may not be more stringent for essential caregivers than safety protocols for staff.

(f) An ICF/IID must obtain the signature of the essential caregiver certifying that the essential caregiver will follow the ICF/IID's safety protocols for essential caregiver visits.

(g) An ICF/IID may revoke an essential caregiver designation if the caregiver violates the facility's safety protocols or rules adopted under this chapter.

(h) If an ICF/IID revokes a person's designation as an essential caregiver under subsection (g) of this section:

(1) the individual or the individual's legally authorized representative has the right to immediately designate another person as the essential caregiver;

(2) within 24 hours after the revocation, the ICF/IID must inform the individual or the individual's LAR, in writing, of the right to an appeal the revocation and the procedures for filing an appeal with the Texas Health and Human Services Commission (HHSC) Appeals Division by:

(A) email at OCC_Appeals_Contested-Cases@hhs.texas.gov; or

(B) mail at HHSC Appeals Division, P.O. Box 149030, MC W-613, Austin, TX 78714-9030; and

(3) the ICF/IID must comply with a hearing officer's decision regarding an appeal of an essential caregiver revocation.

(i) An ICF/IID may petition HHSC to suspend in-person essential caregiver visits for no more than seven consecutive calendar days if in-person visitation poses a serious community health risk. An ICF/IID may request an extension from HHSC to suspend in-person essential caregiver visitation beyond the ICF/IID's original request, but HHSC may not approve an extension for a period that exceeds seven days and an ICF/IID must separately request each extension. HHSC may deny the ICF/IID's original request to suspend in-person essential caregiver visitation or the ICF/IID's extension request if HHSC determines that in-person visitation does not pose a serious community health risk.

(j) An ICF/IID may not suspend in-person essential caregiver visits in a calendar year for a time period that:

(1) is more than 14 consecutive days; or

(2) is more than a total of 45 days.

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 October 29, 2021.

TRD-202104364
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: December 12, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER H. HOME AND COMMUNITY-BASED SERVICES

26 TAC §§570.701, 570.703, 570.705, 570.707, 570.709, 570.711, 570.713

STATUTORY AUTHORITY

The new sections are authorized by: Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §§142.0011 and 142.012, which provide that the Executive Commissioner of HHSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents; Texas Health and Safety Code §§247.025 and 247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and ensure the quality of care and protection of residents' health and safety, respectively; Texas Health and Safety Code §248A.101, which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 248A and protect the health, safety, and comfort of the minors serviced by a PPECC; Texas Health

and Safety Code §252.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 252; Human Resources Code §103.004, which requires the Executive Commissioner of HHSC to adopt rules for implementing Chapter 103 and set standards for the health and welfare of persons attending a DAHS facility; Texas Human Resources Code §32.021, which provides that the Executive Commissioner of HHSC shall adopt rules for the proper and efficient operation of the medical assistance program; and Health and Safety Code §260B(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures; and Texas Health and Safety Code §260C(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures.

The new sections implement Texas Government Code §531.0055; Health and Safety Code §§142.0011, 142.012, 242.001, 242.037, 247.025, 247.026, 248A.101, 252.008, 260B(b), and 260C(b); and Human Resources Code §§32.021 and 103.004.

§570.701. Emergency Response to Outbreak, Epidemic, or Pandemic.

(a) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, a program provider must regularly check federal, state, and local guidance related to the contagious disease outbreak, epidemic, or pandemic.

(b) During a contagious disease outbreak, epidemic, or pandemic, a program provider must maintain infection control measures when either evacuation or sheltering in place is necessary.

(c) Each program provider must have a communication plan that identifies a primary point of contact for questions and information and how individuals, individual's legally authorized representatives (LAR), and families can reach that point of contact.

(d) During a contagious disease outbreak, epidemic, or pandemic, a program provider must maintain a 90-day supply of personal protective equipment (PPE), including surgical facemasks for droplet protection, N95 masks, goggles, face shields, gloves, and gowns. The 90-day supply is based on the CDC burn rate methodology.

(e) A program provider must ensure staff use appropriate PPE while providing services to individuals.

(f) A program provider must ensure individuals have appropriate PPE to use during the provision of services.

(g) A program provider must activate outbreak infection control measures if:

(1) a positive case is identified in an individual or staff;

(2) an individual or staff is exhibiting related symptoms; and

(3) there is a suspected or known exposure of an individual or staff to a positive case.

(h) A program provider must have a protocol for receiving deliveries. This protocol must comply with any CDC guidance in place.

§570.703. Testing.

(a) During a contagious disease outbreak, epidemic, or pandemic, the program provider must have a testing strategy for all staff and individuals if required by the CDC, HHSC, or DSHS.

(b) A program provider must inform an individual or an individual's legally authorized representative (LAR) of the right to refuse testing and document the individual or LAR's choice.

§570.705. Reporting.

(a) A program provider must report new positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic to HHSC in accordance with any guidance issued by HHSC or the DSHS.

(b) A program provider must comply with a request from HHSC to submit data related to positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic.

(c) A program provider must inform staff, individuals, individual representatives, individual's designated emergency contacts, or responsible parties of those residing in a residence by 5:00 p.m. the next calendar day following the occurrence of a confirmed infection among individuals or staff. The program provider must not include personally identifiable information.

§570.707. Screening.

(a) If required by the Centers for Disease Control and Prevention (CDC), HHSC, or DSHS, a program provider must screen all visitors outside of the residence prior to allowing them to enter, except emergency services personnel entering the residence in an emergency. Visitors who fail the screening must not enter the residence.

(b) The following screening criteria shall be used for visitors and program provider staff:

(1) signs or symptoms specific to the contagious disease that has caused the outbreak, epidemic, or pandemic;

(2) any other signs and symptoms as outlined by the CDC; or

(3) testing positive, indicating that the person is still in the infectious period related to the contagious disease outbreak, epidemic, or pandemic.

(c) Program provider staff must document all persons entering the residence in a log, which must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(d) A program provider must screen all staff at the beginning of each shift prior to allowing them to enter the residence in accordance with subsection (b) of this section.

(e) Staff who do not pass screening must not enter the residence and not return until it is confirmed that they are not infectious or until they meet the criteria to discontinue quarantine or isolation.

(f) A program provider must not prohibit an individual who lives in the residence from entering the residence even if the individual meets any of the screening criteria.

(g) A program provider must allow persons with legal authority to enter and providers of essential services to enter the residence if they pass the screening as required by subsection (b) of this section.

§570.709. Staff Requirements.

(a) Each program provider must maintain adequate staffing levels to meet the needs of all individuals.

(b) Each program provider must have a staffing plan in place that:

(1) ensures staff are trained to provide care to individuals; and

(2) a staffing contingency plan to ensure adequate staffing in the event multiple staff are out due to illness.

(c) Each program provider must have at least one staff member per program provider responsible for coordinating the infection control protocol.

(d) Each program provider must document that training was provided to each staff member and that the training topics included:

(1) providing care to individuals;

(2) proper use of personal protective equipment (PPE) including appropriate PPE use for:

(A) providing care to individuals who are negative status, positive status, and unknown status; and

(B) providing care to individuals exhibiting symptoms and awaiting test results;

(3) proper cleaning and disinfecting procedures;

(4) the program provider's infection control plans; and

(5) the program provider's emergency plan.

§570.711. Visitation.

(a) This section does not apply to host home/companion care, unless otherwise specified.

(b) A program provider's visitation policies and procedures may change during a contagious disease outbreak, epidemic, or pandemic in response to directives issued by the CDC, HHSC, or DSHS. A program provider's visitation policies and procedures may not be more restrictive than directives issued by HHSC, DSHS, executive orders, or local orders.

(c) A program provider must permit clergy to visit an individual at the request of the individual.

(d) A program provider may prohibit in-person visitation with a religious counselor during a public health emergency if a federal law or federal agency requires the residence to prohibit in-person visitation during that period.

(e) A program provider may allow salon services visits. A program provider must establish policies and procedures in response to a contagious disease outbreak, epidemic, or pandemic based on guidance issued by the CDC, HHSC, or DSHS that provide conditions for a salon visit to occur.

(f) A program provider must permit end of life visits and immediately communicate any changes in an individual's condition that would qualify the individual for end of life visits to the individual's representative.

§570.713. Essential Caregiver Visits.

(a) An individual, or individual's legally authorized representative (LAR), if the individual is unable, has the right to designate an essential caregiver.

(b) A program provider must permit essential caregiver visits.

(c) A program provider must develop a visitation policy that permits an essential caregiver to visit the individual for at least two hours each day.

(d) A program provider must have procedures in place to enable physical contact between the individual and the essential caregiver.

(e) A program provider must develop safety protocols for essential caregiver visits. The safety protocols may not be more stringent for essential caregivers than safety protocols for staff.

(f) A program provider must obtain the signature of the essential caregiver certifying that the essential caregiver will follow the program provider's safety protocols for essential caregiver visits.

(g) A program provider may revoke an essential caregiver designation if the caregiver violates the program provider's safety protocols or rules adopted under this chapter.

(h) If a program provider revokes a person's designation as an essential caregiver under subsection (g) of this section:

(1) the individual, or individual's LAR, has the right to immediately designate another person as the essential caregiver;

(2) within 24 hours after the revocation, the program provider must inform the individual or the individual's legally authorized representative, in writing, of the right to an appeal the revocation and the procedures for filing an appeal with the Texas Health and Human Services Commission (HHSC) Appeals Division by:

(A) email at OCC Appeals ContestedCases@hhs.texas.gov; or

(B) mail at HHSC Appeals Division, P.O. Box 149030, MC W-613, Austin, TX 78714-9030; and

(3) a program provider must comply with a hearing officer's decision regarding an appeal of an essential caregiver revocation.

(i) A program provider may petition HHSC to suspend in-person essential caregiver visits for no more than seven consecutive calendar days if in-person visitation poses a serious community health risk. A program provider may request an extension from HHSC to suspend in-person essential caregiver visitation beyond the program provider's original request, but HHSC may not approve an extension for a period that exceeds seven days and a program provider must separately request each extension. HHSC may deny the program provider's original request to suspend in-person essential caregiver visitation or the program provider's extension request if HHSC determines that in-person visitation does not pose a serious community health risk.

(j) A program provider may not suspend in-person essential caregiver visits in a calendar year for a time period that:

(1) is more than 14 consecutive days; or

(2) is more than a total of 45 days.

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 October 29, 2021.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: December 12, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER I. TEXAS HOME LIVING

26 TAC §§570.801 - 570.803, 570.805, 570.807

STATUTORY AUTHORITY

The new sections are authorized by: Texas Government Code §531.0055, which provides that the Executive Commissioner of

HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §§142.0011 and 142.012, which provide that the Executive Commissioner of HHSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents; Texas Health and Safety Code §§247.025 and 247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and ensure the quality of care and protection of residents' health and safety, respectively; Texas Health and Safety Code §248A.101, which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 248A and protect the health, safety, and comfort of the minors serviced by a PPECC; Texas Health and Safety Code §252.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 252; Human Resources Code §103.004, which requires the Executive Commissioner of HHSC to adopt rules for implementing Chapter 103 and set standards for the health and welfare of persons attending a DAHS facility; Texas Human Resources Code §32.021, which provides that the Executive Commissioner of HHSC shall adopt rules for the proper and efficient operation of the medical assistance program; and Health and Safety Code §260B(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures; and Texas Health and Safety Code §260C(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures.

The new sections implement Texas Government Code §531.0055; Health and Safety Code §§142.0011, 142.012, 242.001, 242.037, 247.025, 247.026, 248A.101, 252.008, 260B(b), and 260C(b); and Human Resources Code §§32.021 and 103.004.

§570.801. Emergency Response to Outbreak, Epidemic, or Pandemic.

(a) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, a Texas Home Living program provider must regularly check federal, state, and local guidance related to the contagious disease outbreak, epidemic, or pandemic.

(b) During a contagious disease outbreak, epidemic, or pandemic, a program provider must maintain infection control measures when either evacuation or sheltering in place is necessary.

(c) Each program provider must have a communication plan that identifies a primary point of contact for questions and information and how individuals, individual's legally authorized representatives (LAR), and families can reach that point of contact.

(d) During a contagious disease outbreak, epidemic, or pandemic, a program provider must maintain a 90-day supply of personal protective equipment (PPE), including surgical facemasks for droplet protection, N95 masks, goggles, face shields, gloves, and gowns. The 90-day supply is based on the CDC burn rate methodology.

(e) A program provider must ensure staff use appropriate PPE while providing services to individuals.

(f) A program must ensure individuals have appropriate PPE to use during the provision of services.

§570.802. Testing.

(a) During a contagious disease outbreak, epidemic, or pandemic, the program provider must have a testing strategy for all staff and individuals if required by the CDC, HHSC, or DSHS.

(b) A program provider must inform an individual or an individual's LAR of the right to refuse testing and document the individual or LAR's choice.

§570.803. Reporting.

(a) A program provider must report new positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic to HHSC in accordance with any guidance issued by HHSC or DSHS.

(b) A program provider must comply with a request from HHSC to submit data related to positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic.

(c) A program provider must inform staff, individuals, individual representatives, individual's designated emergency contacts, or responsible parties of those residing in a residence by 5:00 p.m. the next calendar day following the occurrence of a confirmed infection among individuals or staff. The program provider must not include personally identifiable information.

§570.805. Screening.

(a) Prior to staff providing any services to an individual, the staff must use the following screening criteria:

(1) signs or symptoms specific to the contagious disease that has caused the outbreak, epidemic, or pandemic;

(2) any other signs and symptoms as outlined by the CDC; or

(3) testing positive, indicative that the person is still in the infectious period related to the contagious disease outbreak, epidemic, or pandemic.

(b) If the individual does not pass the screening, staff must use appropriate personal protective equipment during the visit.

(c) A program provider must screen all service providers at the beginning of each shift prior to allowing the service provider to provide services to an individual.

(d) Staff who do not pass screening must not enter the home and not return until it is confirmed that they are not infectious or until they meet the criteria to discontinue quarantine or isolation.

§570.807. Staff Requirements.

(a) Each program provider must maintain adequate staffing levels to meet the needs of all individuals.

(b) Each program provider must have a staffing plan in place that:

(1) ensures staff are trained to provide care to individuals; and

(2) includes a staffing contingency plan to mitigate staffing shortages in the event multiple staff are unable to work due to illness or

quarantine requirements in relation to the contagious disease outbreak, epidemic, or pandemic.

(c) Each program provider must have at least one staff member responsible for coordinating infection control protocol.

(d) Each program provider must document that training was provided to each staff member and that the training topics included:

(1) providing care to individuals in isolation or quarantine;

(2) proper use of personal protective equipment (PPE) including appropriate PPE use for:

(A) providing care to individuals who are negative status, positive status, and unknown status; and

(B) providing care to individuals exhibiting symptoms and awaiting test results;

(3) proper donning and doffing of PPE; and

(4) the program provider's infection control plans.

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 October 29, 2021.

TRD-202104367
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: December 12, 2021
For further information, please call: (512) 438-3161

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TITLE 28. INSURANCE

PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

CHAPTER 276. GENERAL ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §§276.2, 276.7, 276.8

The Office of Injured Employee Counsel (OIEC) proposes the repeal of existing rules 28 Texas Administrative Code (TAC), Chapter 276, Subchapter A, §§276.2, 276.7, and 276.8. The information in these rules is addressed in the Texas Labor and Government Codes, interagency agreements, and in OIEC policy. The rules are not necessary and should be repealed.

REASONED JUSTIFICATION. OIEC identified a number of rules that required updates during the agency's rule review under Texas Government Code §2001.039, which requires a state agency to review each of its rules every four years. The agency identified rules that are redundant with Labor and Government Code provisions governing OIEC. In addition, existing agency policies and interagency agreement address the rule content. As a result, agency rules are unnecessary.

The proposed repeal of §276.2, The Mission of the Office of Injured Employee Counsel, eliminates language that is already found in Texas Labor Code §404.101, OIEC's website and numerous agency publications.

The proposed repeal of §276.7, Agency's Ethics Statement and Employee Requirements, eliminates duplicative language already found in Government Code §572.051, OIEC policy, and interagency agreements with the Texas Department of Insurance and the Division of Workers' Compensation.

The proposed repeal of §276.8, Ethics Committee, eliminates language found in Government Code §572.051 and the OIEC Employee Manual.

FISCAL NOTE. Mrs. Andria Franco, Deputy Public Counsel, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering the repeals. The proposed repeals will have no measurable impact on local employment or the local economy.

PUBLIC BENEFIT. Mrs. Franco has also determined that, for each year of the first five years the proposed repeal is in effect, the proposed repeals will have the public benefit of eliminating redundant regulations.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL. Mrs. Franco anticipates there will be no costs to comply with the repeal of the rules. The proposed changes impact internal agency operations. Because OIEC has determined that the proposed repeal of rules will have no costs to system participants, Government Code §2001.0045 does not apply.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES, AND RURAL COMMUNITIES. In accordance with Government Code §2006.002(c), OIEC has determined that adoption of the proposed repeals will not have a direct, adverse economic impact on small or micro-businesses or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT. Government Code §2001.0221 requires that a state agency prepare a government growth impact statement describing the effects that a proposed rule may have during the first five years that the rule would be in effect. The proposed repeal of rules will not create or eliminate a government program and will not require an increase or decrease in fees. Implementation of the proposal will not create or eliminate employee positions and will not require an increase or decrease in future legislative appropriations to the agency.

The proposed repeal deletes §§276.2, 276.7, and 276.8. The proposed repeal does not change the number of individuals subject to the rules' applicability. The proposed repeal will not significantly affect the state's economy.

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

Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) 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 (b) 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. The proposal will not impose any additional costs on regulated persons.

TAKINGS IMPACT ASSESSMENT. OIEC has determined that no private real property interests are affected by this proposal,

and this repeal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. Therefore, this proposal 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 the proposal must be received no later than 5:00 p.m. on December 12, 2021, to Kathleen Contreras, Mail Code 50, and 7551 Metro Center Drive, Austin, Texas 78744, or via email to kathleen.contreras@oiec.texas.gov. Any requests for a public hearing should be submitted separately to the Public Counsel.

STATUTORY AUTHORITY. Labor Code §404.006 authorizes the Public Counsel to adopt rules as necessary to implement Chapter 404 of the Labor Code.

CROSS REFERENCE TO STATUTE. The proposed repeal of 28 Texas Administrative Code §276.2 affects Tex. Lab. Code §404.101 and the proposed repeal of 28 Texas Administrative Code §276.7 and §276.8 affects Tex. Lab. Code Tex. Gov't Code §572.051.

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

§276.2. The Mission of The Office of Injured Employee Counsel.

§276.7. Agency's Ethics Statement and Employee Requirements.

§276.8. Ethics Committee.

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 October 26, 2021.

TRD-202104315
Gina McCauley
General Counsel
Office of Injured Employee Counsel
Earliest possible date of adoption: December 12, 2021
For further information, please call: (512) 804-4194

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 16. PLANNING AND DEVELOPMENT OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) proposes amendments to §§16.2, 16.101, 16.105, 16.106, and 16.154, and new §16.161, concerning Planning and Development of Transportation Projects.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

Amendments to §16.2, Definitions and Acronyms, remove the definition of "Chief Planning and Project Officer" to align with the department's current organizational structure, which no longer uses the position title.

Amendments to §16.101, Transportation Improvement Program (TIP), revise the frequency for required TIP updates to provide alignment with federal regulations. In addition, this change provides the flexibility, at the discretion of the department in coordination with metropolitan planning organizations, to update the TIP more frequently than once every four years, if needed.

Amendments to §16.105, Unified Transportation Program (UTP), provide clarification and flexibility. Changes to subsection (b) provide clarification that the UTP will be fiscally constrained to the total planning cash flow forecast and will list estimated funding levels and allocation of funds for each year. Additional amendments correct typographical errors to make the term "statewide transportation improvement program" singular.

Amendments to §16.105(d) add new paragraph (3) to clarify that the Texas Transportation Commission (commission) may consider and require other district and MPO category programming when selecting projects for category 12 funding and renumber existing paragraphs accordingly. These revisions align with current expectations for the state and region to partner and work collaboratively to address statewide and regional needs.

Amendments to §16.105(g) revise the description of UTP public meetings and public hearings to reflect the increased usage of online platforms for such an event to reach audiences statewide. The revision also clarifies that the department will present a draft UTP document at the public meeting. To accommodate technology changes, the amendments allow for other means for submitting public comments as well as specifying that copies of documents will be made available in districts and the Transportation Planning and Programming Division office in Austin on request. Subsection (h) is amended to provide that copies of the entire approved unified transportation program and other specified documents will be available, on request, in districts and the Transportation Planning and Programming Division office in Austin.

Amendments to §16.106, Major Transportation Projects, modify the criteria used for designating a project as a major transportation project to the criteria specified in 23 U.S.C 106(h). Amendments to subsection (b) clarify that the list of major transportation projects will be updated annually only if new major projects are designated. Amendments to subsection (c) provide flexibility on the level of design required for design-build major projects as prescribed in 43 TAC §9.153.

Amendments to §16.154, Transportation Allocation Funding Formulas, provide several changes for project funding. Subsection (a)(1)(B) is amended to remove the terms "off-system" and "interstate" in the allocation formula for Category 1 Preventive Maintenance and Rehabilitation. Off-system roadways are not eligible for Category 1 funding and should not be considered in the allocation formula. Interstates are included in the rule's reference to "on-system" and the separate reference to interstates is duplicative.

Amendments to §16.154(e) relate to the requirements for listing projects in the published UTP. The revision clarifies which projects, funded through certain categories, must be shown in the list but does not change current practice.

New §16.154(i) defines carryovers in UTP categories. Carryovers of unused fund allocations are based on the previous year's lettings and adjustment and can increase or decrease the available funds for programming projects in the UTP. The previous year's carryovers are not known until the end of the fiscal year closeout process and therefore, are generally not

reflected in the UTP allocations. The amendment codifies the current department practice.

New §16.161, Ten-Year Programming Flexibility for Certain Categories, defines the use of 10-year category allocations in certain UTP categories, while adhering to the department's related fiscal constraint requirements. The section provides the department with flexibility to program large mobility projects based on total 10-year allocations or category totals, since the cost of many large projects can exceed the annual amounts allocated in the UTP. This also provides for advance planning opportunities to ensure projects continue with development and are ready to let and adjust to various shifts in planning and scheduling to optimize use of available funds.

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

Jessica Butler, P.E., Transportation Planning and Programming 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

Ms. Butler 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 benefits anticipated as a result of enforcing or administering the rules will include more efficient use of allocated funding in the UTP, more equitable distribution of highway funds across the state, and a more effective and streamlined process for UTP public involvement.

COSTS ON REGULATED PERSONS

Ms. Butler has 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

Ms. Butler has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rulemaking will have no effect on government growth. She expects that during the first five years that the rulemaking 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

Ms. Butler 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 §§16.2, 16.101, 16.105, 16.106, and 16.154, and new §16.161 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 "UTP Formula Allocation Rule Changes." The deadline for receipt of comments is 5:00 p.m. on December 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.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §16.2

STATUTORY AUTHORITY

The amendments and new section are 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, Transportation Code, §201.991, which requires the commission to adopt rules related to the department's unified transportation program and §201.996, which requires the commission to adopt rules that specify the formulas for allocating funds to districts and metropolitan planning organizations.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.991 and §201.996.

§16.2. Definitions and Acronyms.

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

(1) Chief financial officer--The chief financial officer of the department, or that officer's designee.

~~[(2) Chief planning and project officer--The chief administrative officer of the department in charge of project planning and development, or that officer's designee.]~~

(2) [~~(3)~~] Clean Air Act (CAA)--The Clean Air Act of 1970 and Amendments of 1990 (42 U.S.C. §7401 et seq.), including proce-

dures that apply to all transportation plans, programs, and projects as they relate to air quality.

(3) [~~(4)~~] Commission--The Texas Transportation Commission.

(4) [~~(5)~~] Conformity--Clean Air Act requirements that ensure that federal funding and approval are given to transportation plans, programs, and projects that are consistent with the air quality goals established by the State Implementation Plan.

(5) [~~(6)~~] Corridor--A broad geographic band with no predefined size or scale that follows a general directional flow, providing for the movement of people and freight and connecting major sources of transportation trips. It involves a nominally linear transportation service area that may contain a number of streets, highways, rail, utility, and public transportation route alignments.

(6) [~~(7)~~] Department--The Texas Department of Transportation.

(7) [~~(8)~~] District--One of the geographic areas into which the department is divided in order to conduct its primary work activities.

(8) [~~(9)~~] District engineer--The chief administrative officer in charge of a district, or that officer's designee.

(9) [~~(10)~~] Environmental Protection Agency (EPA)--The agency of the federal government with broad responsibilities for environmental protection and enforcement, including air quality, as it relates to this chapter.

(10) [~~(11)~~] Executive director--The executive director of the department or the executive director's designee.

(11) [~~(12)~~] Federal discretionary programs--Programs that provide the U.S. Department of Transportation with discretion to award funds for specific projects outside of the normal transportation fund formulas. The U.S. Congress may designate the projects that are eligible for discretionary program funds and the scope of discretion may vary depending on the applicable statutory provisions.

(12) [~~(13)~~] Federal Highway Administration (FHWA)--The federal agency primarily responsible for highway transportation.

(13) [~~(14)~~] Federal Railroad Administration (FRA)--The federal agency primarily responsible for railroad transportation.

(14) [~~(15)~~] Federal Transit Administration (FTA)--The federal agency primarily responsible for public transportation.

(15) [~~(16)~~] Governor--The governor of the State of Texas.

(16) [~~(17)~~] Letting--The official act of opening contractors' bids for a proposed highway improvement contract to construct, reconstruct, or maintain a segment of the state highway system, or to construct or maintain a building or other facility appurtenant to a building.

(17) [~~(18)~~] Local transportation entity--An entity that participates in the transportation planning process. The term includes but is not limited to:

(A) a metropolitan planning organization;

(B) a rural planning organization;

(C) a regional tollway authority organized under Transportation Code, Chapter 366;

(D) a regional transportation authority operating under Transportation Code, Chapter 452;

(E) a metropolitan rapid transit authority operating under Transportation Code, Chapter 451;

(F) a rural transit district as defined by Transportation Code, §458.001;

(G) a coordinated county transportation authority operating under Transportation Code, Chapter 460;

(H) a rural rail transportation district operating under Transportation Code, Chapter 172; and

(I) a commuter rail district operating under Transportation Code, Chapter 174.

(18) [~~(19)~~] Metropolitan planning organization (MPO)--The organization or policy board of an organization created and designated under 23 U.S.C. §134 and 49 U.S.C. §5303, as amended, to make transportation planning decisions for the metropolitan planning area and carry out the metropolitan transportation planning process.

(19) [~~(20)~~] Mexican ports of entry--Connections between Mexico and the State of Texas at international bridge crossings of 5,000 vehicles or more average daily traffic.

(20) [~~(21)~~] Mobility projects--Transportation projects that add additional mainlanes to an existing highway facility or construct lanes on a new location and have a length of at least one mile, or any projects that otherwise improve transportation facilities for highways, public transportation, or other modes of transportation to decrease travel time and the level or duration of traffic congestion, and to increase the safe and efficient movement of people and freight.

(21) [~~(22)~~] On-system--The system of highways in the state included in a comprehensive plan prepared by the department's executive director under the direction and with the approval of the commission in accordance with Transportation Code, §201.103.

(22) [~~(23)~~] Planning organization--A metropolitan planning organization, a rural planning organization, or, for an area that is not in the boundaries of a metropolitan planning organization or a rural planning organization, a district.

(23) [~~(24)~~] Public transportation--Transportation of passengers and their hand carried packages or baggage on a regular or continuing basis by means of surface or water conveyance by a public or private entity that receives financial assistance from the Federal Highway Administration, the Federal Transit Administration, the Federal Railroad Administration, the department, or a local political subdivision.

(24) [~~(25)~~] Routes--All or a portion of a selected course of travel between two specific geographic locations.

(25) [~~(26)~~] Rural planning organization (RPO)--A voluntary organization created and governed by local elected officials with responsibility for transportation decisions at the local level, including an organization established by a council of governments or regional planning commission designated by the governor pursuant to Local Government Code, Chapter 391, to address rural transportation priorities and planning and provide recommendations to the department for areas of the state not included in the boundaries of a metropolitan planning organization.

(26) [~~(27)~~] Rural transportation improvement program (RTIP)--A staged, multiyear, intermodal program of transportation projects and public transportation projects developed by the department, in consultation with local officials, for areas of the state outside of the metropolitan planning area boundaries. The RTIP includes a financially constrained plan that demonstrates how the program can be implemented.

(27) [~~(28)~~] State Implementation Plan (SIP)--The latest approved version of the state adopted plan promulgated for each nonattainment or maintenance area to achieve or maintain compliance with the national ambient air quality standards required by the federal Clean Air Act.

(28) [~~(29)~~] Subarea--A geographic area with no predefined size or scale that is located within the boundaries of a designated metropolitan planning area.

(29) [~~(30)~~] Surface Transportation Program (STP)--The funding program established by 23 U.S.C. §133.

(30) [~~(31)~~] Texas Commission on Environmental Quality (TCEQ)--The state agency responsible for coordination of natural resources and air quality for the state, including development of the State Implementation Plan.

(31) [~~(32)~~] Texas Highway Trunk System--A rural network of four-lane or better divided roadways that will serve as a principal connector of all Texas cities with over 20,000 population as well as major ports and points of entry, not to exceed a total system mileage of 11,500 centerline miles.

(32) [~~(33)~~] Transportation control measure (TCM)--Any measure used for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions.

(33) [~~(34)~~] Transportation management area (TMA)--An urbanized area with a population over 200,000 as defined by the U.S. Bureau of the Census and designated by the U.S. Secretary of Transportation, or any additional area where transportation management area designation is requested by the governor and the metropolitan planning organization and designated by the U.S. Secretary of Transportation.

(34) [~~(35)~~] Transportation project--The planning, engineering, right of way acquisition, expansion, improvement, addition, or contract maintenance, other than the routine or contracted routine maintenance of a bridge, highway, toll road or toll road system, or railroad, enhancement of a roadway that increases the safety of the traveling public, air quality improvement initiative, or transportation enhancement activity under 23 U.S.C. §101.

(35) [~~(36)~~] Transportation reinvestment zone (TRZ)--An area created and designated by a municipality or county under Transportation Code, §§222.106 - 222.108, to promote and fund one or more transportation projects as authorized under that section.

(36) [~~(37)~~] Unified Planning Work Program (UPWP)--The governing planning document, prepared by an MPO on an annual or biennial basis, which identifies the transportation planning work to be undertaken within the metropolitan planning area for the applicable period.

(b) Acronyms. The following acronyms, when used in this chapter, are abbreviations for the associated terms. If an associated term is not defined under subsection (a) of this section, a reference is provided to the section in this chapter in which the term is primarily described.

(1) CAA--Clean Air Act.

(2) EPA--Environmental Protection Agency.

(3) FHWA--Federal Highway Administration.

(4) FRA--Federal Railroad Administration.

(5) FTA--Federal Transit Administration.

(6) MPO--Metropolitan planning organization.

(7) MTP--Metropolitan transportation plan, as described in §16.53 of this chapter (relating to Metropolitan Transportation Plan).

(8) RPO--Rural planning organization.

(9) RTIP--Rural transportation improvement program.

(10) SIP--State implementation plan.

(11) SLRTP--Statewide long-range transportation plan, as described in §16.54 of this chapter (relating to Statewide Long-Range Transportation Plan).

(12) STIP--Statewide transportation improvement program, as described in §16.103 of this chapter (relating to Statewide Transportation Improvement Program).

(13) STP--Surface transportation program.

(14) TCEQ--Texas Commission on Environmental Quality.

(15) TCM--Transportation control measure.

(16) TIP--Transportation improvement program, as described in §16.101 of this chapter (relating to Transportation Improvement Program).

(17) TMA--Transportation management area.

(18) TRZ--Transportation reinvestment zone.

(19) UPWP--Unified planning work program.

(20) UTP--Unified transportation program, as described in §16.105 of this chapter (relating to Unified Transportation Program).

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 October 28, 2021.

TRD-202104341
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 12, 2021
For further information, please call: (512) 463-8630

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SUBCHAPTER C. TRANSPORTATION PROGRAMS

43 TAC §§16.101, 16.105, 16.106

STATUTORY AUTHORITY

The amendments and new section are 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, Transportation Code, §201.991, which requires the commission to adopt rules related to the department's unified transportation program and §201.996, which requires the commission to adopt rules that specify the formulas for allocating funds to districts and metropolitan planning organizations.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.991 and §201.996.

§16.101. Transportation Improvement Program (TIP).

(a) Requirements. Title 23 U.S.C. §134 and 23 C.F.R. Part 450, require the metropolitan transportation planning process to include the development of a transportation improvement program (TIP) for the metropolitan planning area, containing a list of projects that have been approved for development in the near term. The list must be prioritized by project within each funding category as described in §16.105(b) of this subchapter (relating to Unified Transportation Program (UTP)). The TIP shall be designed such that once implemented, it makes progress toward achieving the required federal performance targets. The TIP shall include, to the maximum extent practicable, a description of the anticipated effect of the TIP toward achieving those performance targets and a demonstration of the link between the investment priorities to those performance targets. An approved TIP is then included in the statewide transportation improvement program (STIP) which contains a listing of projects for all areas of the state that are likely to be implemented in that identified four-year period.

(b) Development of transportation improvement program (TIP). The MPO designated for a metropolitan planning area, in cooperation with the department and public transportation operators as defined by 23 C.F.R. Part 450, shall develop a TIP and financial plan in accordance with federal requirements. The department will provide an MPO with estimates of available federal and state funds to be used in developing the financial plan in accordance with §16.152 of this chapter (relating to Cash Flow Forecast). The TIP shall cover the metropolitan planning area and shall be approved and amended in accordance with subsection (h) of this section. The TIP shall be updated and approved in accordance with federal regulations and, in the discretion of the department in consultation with the metropolitan planning organizations, may be updated more frequently than [~~at least~~] every four [~~two~~] years.

(c) Grouping of projects. Projects that are not considered by the department and the MPO to be of appropriate scale for individual identification in a given program year may be grouped by function, geographic area, or work type (e.g., minor rehabilitation, preventive maintenance). In nonattainment and maintenance areas, classification must be consistent with the exempt project classifications contained in the EPA conformity regulations.

(d) Projects excluded. The following projects may be excluded from the TIP by agreement between the department and the MPO:

(1) safety projects funded under 23 U.S.C. §402 (highway safety programs) and emergency relief projects, except those involving substantial functional, location, and capacity changes;

(2) planning and research activities, except those activities funded with National Highway System or Surface Transportation Program funds other than those used for major investment studies; and

(3) projects under 23 U.S.C. §104(b)(1), (b)(4), and §144 that are for resurfacing, restoration, rehabilitation, reconstruction, or highway safety improvement, and which will not alter the functional traffic capacity or capability of the facility being improved.

(e) Consistency and conformity.

(1) Relationship to the metropolitan transportation plan (MTP). A project in the TIP must be consistent with the MTP.

(2) Relationship to the statewide long-range transportation plan (SLRTP). A project in the TIP must be consistent with the SLRTP developed under federal law and §16.54 of this chapter (relating to Statewide Long-Range Transportation Plan (SLRTP)).

(3) Relationship to the Clean Air Act and State Implementation Plan. In nonattainment and maintenance areas, a project selected for the TIP must conform to the Clean Air Act (CAA) and the state implementation plan (SIP).

(4) Conformity requirements. The MPO in each urbanized nonattainment and maintenance area will be responsible for preparation of the conformity determination requirements of the CAA and the Environmental Protection Agency (EPA) conformity regulations. The department will be responsible for preparation of the conformity determination requirements in nonattainment and maintenance areas outside of metropolitan planning areas.

(f) Format. The department, in cooperation with the MPOs, will develop a uniform TIP format to produce a uniform statewide transportation improvement program (STIP). The department in consultation with the MPOs may make modifications to the format. The MPOs shall submit electronic copies of their TIPs to the department in this format.

(g) Financial plan. A financial plan that demonstrates consistency with funding reasonably expected to be available during the relevant period shall be developed for TIPs by the MPO in cooperation with the department and public transportation operators. Fiscal constraint must be demonstrated and maintained by year.

(h) Transportation improvement program (TIP) approval. The MPO and the governor shall approve the TIP and any amendments. If the governor delegates this authority to the commission, the commission, or if further delegated, the executive director, will approve transportation improvement programs if the executive director finds the TIP has met all federal requirements and the requirements of this subchapter, including satisfaction of the project selection criteria developed for the department's unified transportation program, as set forth in §16.105(d) of this subchapter.

(i) Management. As a management tool for monitoring progress in implementation of the metropolitan transportation plan, the TIP shall identify the criteria and process for prioritizing implementation of transportation plan elements for inclusion in the TIP and any changes in priorities from previous TIPs in accordance with the factors specified in federal regulations and §16.105(d) of this subchapter.

(j) Updating. The frequency and cycle for updating the TIP must be compatible with the statewide transportation improvement program (STIP) development process established by the department and described in §16.103 of this subchapter (relating to Statewide Transportation Improvement Program (STIP)).

(k) Modification.

(1) Amendments. The transportation improvement program (TIP) may be amended consistent with the procedures established in this section for its development and approval with the following stipulations.

(A) An amendment to the TIP is required in attainment areas if there is a change:

(i) adding or deleting a federally funded project in the TIP;

(ii) in the scope of work of a federally funded project;

(iii) in the phase of work (such as the addition of preliminary engineering, construction, or right of way) of a federally funded project;

(iv) in the TIP year if the MPO's project selection procedure does not provide for selecting projects from the second, third, or fourth year; or

(v) in funding sources or funding availability that forces the addition or deletion of federally funded projects.

(B) An amendment to the TIP is required in nonattainment areas if there is a change:

(i) adding or deleting a project in the TIP;

(ii) in a project's design concept or scope of work;

(iii) in the phase of work (such as the addition of preliminary engineering, construction, or right of way) of a project;

(iv) in the TIP year if the MPO's project selection procedure does not provide for selecting projects from the second, third, or fourth year;

(v) adding Congestion Mitigation and Air Quality funding to a previously approved project; or

(vi) in funding from non-federal funding to any combination of federal funding or federal and state funding, or where the change in funding sources or funding availability forces the addition or deletion of federally funded projects or regionally significant state funded projects.

(C) An amendment to the transportation improvement program (TIP) is not required if there is a change:

(i) in funding sources, except as provided in this subsection;

(ii) in the cost estimate of a project where, unless federal law or regulation specifies a different cost estimate percentage and condition relating to waiver of the amendment requirement for a particular type of project, such change is not greater than 50 percent of the approved federal cost estimate and the revised cost estimate is less than $1,500,000, and the change in the cost estimate is not caused by a change in the project work scope or limits;

(iii) in the letting date or funding date of a project unless, in nonattainment areas, the change affects conformity;

(iv) in the control section job (CSJ) number of a project unless the change also affects other characteristics of the project or funding that do require an amendment as provided in this subsection; or

(v) that is administrative and does not require public review and comment, redemonstration of fiscal constraint, or a conformity determination.

(2) Conformity requirements. In nonattainment and maintenance areas for transportation related pollutants, a conformity determination must be made on any new or amended TIPs (unless the amendment consists entirely of projects exempt under subsection (c) of this section) in accordance with CAA requirements and the EPA conformity regulations.

(l) Transportation improvement program (TIP) relationship to statewide transportation improvement program (STIP). After approval, the TIP will be included without modification in the STIP except that in nonattainment and maintenance areas, the FHWA and the FTA must make a conformity determination before inclusion. The department will notify the MPO and appropriate federal agencies when a TIP has been included in the STIP.

(m) TIP public participation. Each MPO will develop a public participation process covering the development of a TIP in accordance with federal regulations. The MPOs shall also use the same procedures in amending the TIP.

(n) Project selection procedures. Under federal regulations, project selection from an approved transportation improvement program (TIP) varies depending on whether a project selected for implementation is located in a transportation management area and what type of federal funding is involved.

(1) General. Project selection procedures must be developed for each metropolitan area and for state projects that lie outside of metropolitan planning areas. The MPOs shall coordinate project selection criteria relating to statewide transportation goals with the department for the purpose of achieving consistent, common goals, particularly with respect to mobility projects using a mix of several funding sources.

(A) Project agreement. The first year of both the TIP and the statewide transportation improvement program (STIP) constitute an agreed to list of projects for project selection purposes. Project selection may be revised if the apportioned funds, including the highway obligation ceiling and transit appropriations, are significantly more or less than the authorized funds. In such cases, and if requested by the MPO, the department, or the transit operator, a revised agreed to list of projects for project selection purposes may be developed.

(B) Eligibility. Only projects included in the federally approved STIP will be eligible for funding with Title 23 U.S. Code or Federal Transit Act (49 U.S.C. §5307 et seq.) funds.

(2) Project selection in non-transportation management areas. In an area not designated as a transportation management area, the commission or the affected public transportation operator as defined by 23 C.F.R. Part 450, as applicable, in cooperation with the MPO, will select projects to be implemented using federal funds from the approved TIP. Federal lands highways program projects shall be selected in accordance with 23 U.S.C. §204.

(3) Project selection in transportation management areas (TMAs). In an area designated as a TMA, an MPO, in consultation with the department and public transportation operators as defined by 23 C.F.R. Part 450, shall select from the approved TIP and in accordance with the priorities of the approved TIP, all Title 23 U.S. Code and Federal Transit Act (49 U.S.C. §5307 et seq.) funded projects, except projects on the National Highway System and projects funded under the bridge, interstate maintenance, safety, and federal lands highways programs. The commission, in cooperation with the MPO, will select projects on the National Highway System and projects funded under the bridge, interstate maintenance, and safety programs. Federal lands highways program projects shall be selected in accordance with 23 U.S.C. §204.

§16.105. Unified Transportation Program (UTP).

(a) General. The department will develop a unified transportation program (UTP) that covers a period of ten years to guide the development and authorize construction and maintenance of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. In developing the UTP, the department will collaborate with local transportation entities and public transportation operators as defined by 23 C.F.R. Part 450.

(b) Requirements. The UTP will:

(1) be financially constrained for planning and development purposes based on the planning cash flow forecast prepared and published in accordance with §16.152(a) of this subchapter (relating to Cash Flow Forecasts);

(2) list estimated [~~and estimate~~] funding levels and the allocation of funds to each district, metropolitan planning organization (MPO), and other authorized entity for each year in accordance with Subchapter D of this chapter (relating to Transportation Funding);

(3) [~~(2)~~] list all projects and programs that the department intends to develop, or on which the department intends to initiate construction or maintenance, during the UTP period, and the applicable funding category to which a project or program is assigned, after consideration of the:

(A) statewide long-range transportation plan (SLRTP);

(B) metropolitan transportation plans (MTP);

(C) transportation improvement programs (TIP);

(D) MPO annual reevaluations of project selection in MTPs and TIPs, if any, in accordance with subsection (c) of this section;

(E) statewide transportation improvement program [~~programs~~] (STIP);

(F) recommendations of rural planning organizations (RPO) as provided in this subchapter; and

(G) list of major transportation projects in accordance with §16.106 of this subchapter (relating to Major Transportation Projects); and

(4) [~~(3)~~] designate the priority ranking within a program funding category of each listed project in accordance with subsection (d)(2) of this section.

(c) MPO annual reevaluation of project selection. An MPO may annually reevaluate the status of project priorities and selection in its approved metropolitan transportation plan (MTP) and transportation improvement program (TIP) and provide a report of any changes to the department at the times and in the manner and format established by the department. The reevaluation must be consistent with criteria applicable to development of the MTP and TIP in accordance with federal requirements.

(d) Project selection.

(1) The commission will consider the following criteria for project selection in the UTP as applicable to the program funding categories described in §16.153 of this chapter (relating to Funding Categories):

(A) the potential of the project to meet transportation goals for the state, including efforts to:

(i) maintain a safe transportation system for all transportation users;

(ii) optimize system performance by mitigating congestion, enhancing connectivity and mobility, improving the reliability of the system, facilitating the movement of freight and international trade, and fostering economic competitiveness through infrastructure investments;

(iii) maintain and preserve system infrastructure; and

(iv) accomplish any additional transportation goals for the state identified in the statewide long-range transportation plans as provided in §16.54 of this chapter (relating to Statewide Long-Range Transportation Plan (SLRTP));

(B) the potential of the project to assist the department in attainment of transportation system strategies, the measurable targets for the transportation goals identified in subparagraph (A) of this paragraph, and other related performance measures; and

(C) adherence to all accepted department design standards as well as applicable state and federal law and regulations.

(2) The commission may also consider the potential for project delivery based on other factors such as funding availability and project readiness, after consideration of the criteria described in paragraph (1) of this subsection.

(3) With respect to Category 12 Strategic Priority, the commission may also consider if the district and MPO will commit funding from other categories to the project or as a condition for project selection, may require the district and MPO to commit funds from other categories to the project.

(4) The department will coordinate project selection criteria relating to the transportation goals identified in paragraph (1)(A) of this subsection with the MPOs for the purpose of achieving consistent, common goals, particularly with respect to mobility projects using a mix of several funding sources.

(5) [~~(4)~~] The department will consider performance metrics and measures to evaluate and rank the priority of each project listed in the UTP based on the transportation needs for the state and the goals identified in paragraph (1)(A) of this subsection. A project will be ranked within its applicable program funding category, using a performance-based scoring system, and classified as tier one, tier two, or tier three for ranking purposes. The scoring system will be used for prioritizing projects for which financial assistance is sought from the commission and must account for the diverse needs of the state so as to fairly allocate funding to all regions of the state. Major transportation projects will have a tier one classification and be designated as the highest priority projects within an applicable funding category. A project that is designated for development or construction in accordance with the mandates of state or federal law or specific requirements contained in other chapters of this title may be prioritized in a funding category as a designated project in lieu of a tier one, tier two, or tier three ranking.

(6) [~~(5)~~] The commission will determine and approve the final selection of projects and programs to be included in the UTP, except for the selection of federally funded projects by an MPO serving in an area designated as a transportation management area (TMA) as provided in §16.101(n) of this subchapter (relating to Transportation Improvement Program (TIP)). A federally funded project selected by an MPO designated as a TMA will be approved by the commission, subject to:

(A) satisfaction of the project selection criteria in paragraph (1) of this subsection;

(B) compliance with federal law; and

(C) the district's and MPO's allocation of funds for the applicable years.

(e) Approval of unified transportation program (UTP). Not later than August 31 of each year, the commission will adopt the unified transportation program for the next fiscal year. The UTP may be updated more frequently if necessary to authorize a major change to one or more funding allocations or project listings in the most recent UTP. For the purpose of updating the UTP, the term "major change" refers to the authorization of new projects or the revision of project funding allocations which exceed 10 percent of the project cost or $500,000, whichever is greater, occurring in non-allocation program categories, excluding revisions to local funding contributions and projects designated under miscellaneous state and federal programs. The foregoing does not apply to project funding allocations in Cate-

gory 12 Strategic Priority as described in §16.153(a) of this subchapter (relating to Funding Categories) and all revisions to projects funded in that category must be first included in an update to the UTP approved by the commission.

(f) Administrative revisions. The UTP may be administratively revised at any time and for any reason that does not constitute a major change as described in subsection (e) of this section, with the exception of project funding allocations in Category 12 Strategic Priority as described in subsection (e), or does not affect the total amount of funding allocated to a district for specific corridors in Category 4 Statewide Connectivity Corridor Projects as described in §16.153(a) of this subchapter (relating to Funding Categories).

(g) Public involvement for the unified transportation program.

(1) The department will seek to effectively engage the general public and stakeholders in development of the UTP and any updates to the program.

(2) The department will hold at least one statewide public meeting to present the draft UTP [~~meetings throughout the state that will cover each district during development of the UTP~~] as early as the department determines is feasible to assure public input into the program prior to its final adoption [~~process~~]. The department will also hold at least one statewide public meeting to present [~~meetings throughout applicable areas of the state during development of~~] each proposed update to the program [~~that will cover each district affected by the update~~]. The department will publish notice of each public meeting as appropriate and use communications strategies to maximize attendance at the meeting. The department may conduct a public meeting by video-teleconference or other electronic means that provide for direct communication among the participants.

(3) The department will report its progress on the program and provide an opportunity for a free exchange of ideas, views, and concerns relating to project selection, funding categories, level of funding in each category, the allocation of funds for each year of the program, and the relative importance of the various selection criteria. [~~A representative from each district will attend each public meeting applicable to the district and be available for the discussion.~~]

(4) The department will hold at least one statewide hearing on its project selection process including the UTP's funding categories, the level of funding in each category, the allocation of funds for each year of the program, and the relative importance of the various selection criteria prior to:

(A) final adoption of the UTP and any updates; and

(B) approval of any adjustments to the program resulting from changes to the allocation of funds under §16.160 of this chapter (relating to Funding Allocation Adjustments).

(5) The department will publish a notice of the applicable hearing in the *Texas Register* a minimum of 15 days prior to its being held and will inform the public where to send any written comments. The department will accept written public comments for a period of at least 30 days after the date the notice appears in the *Texas Register.* The department may also accept public comments by other means, as specified in the notice. A copy of the proposed project selection process, the UTP, and any adjustments to the program, as applicable, will be available for review at the time the notice of hearing is published [~~at each of the district offices and at the department's Transportation Planning and Programming Division offices in Austin. A copy will also be available~~] on the department website and, on request, will be available at district offices and at the department's Transportation Planning and Programming office in Austin.

(6) The department will present information regarding the development of the UTP and any updates to the commission not later than the month prior to final adoption of the UTP and any updates.

(h) Publication. The department will publish the entire approved unified transportation program, updates, adjustments, and administrative revisions together with any summary documents highlighting project benchmarks, priorities, and forecasts on the department's website. The documents will also be available for review, on request, at [~~each of the~~] district offices and at the department's Transportation Planning and Programming Division office [~~offices~~] in Austin.

§16.106. Major Transportation Projects.

(a) Criteria. For the purposes of this chapter, a major transportation project is the planning, engineering, right of way acquisition, expansion, improvement, addition, or contract maintenance, other than the routine or contracted routine maintenance, of a bridge, highway, toll road, or toll road system on the state highway system that fulfills or satisfies a particular need, concern, or strategy of the department in meeting the transportation goals established under §16.105 of this subchapter (relating to Unified Transportation Program (UTP)). A project may be designated by the department as a major transportation project if it meets the criteria specified in 23 U.S.C 106(h) [~~one or more of the criteria specified in this subsection~~].

[~~(1) The project has a total estimated cost of $500 million or more. All costs associated with the project from the environmental phase through final construction, including adequate contingencies and reserves for all cost elements, will be included in computing the total estimated cost regardless of the source of funding. The costs will be expressed in year of expenditure dollars.~~]

[~~(2) There is a high level of public or legislative interest in the project.~~]

[~~(3) The project includes a significant level of local or private entity funding.~~]

[~~(4) The project is unusually complex.~~]

[~~(5) The project satisfies a time sensitive critical need of the department related to safety, system connectivity, a hurricane evacuation route, reconstruction of a large infrastructure facility, or other similar need.~~]

(b) List of projects. The [~~A~~] list of major transportation projects, if any new major transportation projects are designated by the department, will be annually updated and incorporated into the unified transportation program in accordance with §16.105 of this subchapter.

(c) Benchmarks. The progress of a major transportation project will be tracked and evaluated in accordance with §16.202 of this chapter (relating to Reporting System for Delivery of Individual Projects) based on benchmarks for planning, implementation, and construction of the project and timelines developed for that project. The benchmarks will include the:

(1) environmental clearance issued by the applicable federal or state authority;

(2) acquisition or possession of right of way parcels sufficient to proceed to construction in accordance with planned construction phasing;

(3) adjustment of utility facilities or coordination of adjustment sufficient to proceed to construction in accordance with planned construction phasing;

(4) 100 percent completion of plans, specifications, and estimates or to the level of completion sufficient to proceed with the

award of a design-build contract in accordance with §9.153 of this title (relating to Solicitation of Proposals);

(5) award of construction contract by the commission; and

(6) completion of construction.

(d) Critical benchmarks.

(1) The first year of the unified transportation program is designated as the implementation phase of the UTP and a major transportation project may be listed in this phase only if the project:

(A) is listed in the statewide long-range transportation plan and the applicable metropolitan transportation plan; and

(B) has environmental clearance issued by the applicable federal or state authority.

(2) The executive director may approve an exception to the requirements contained in paragraph (1) of this subsection if:

(A) the project satisfies a time sensitive critical need of the department related to safety, system connectivity, a hurricane evacuation route, reconstruction of a large infrastructure facility, or other similar need; and

(B) there is a reasonable likelihood that environmental clearance for the project will be issued and the other required development benchmarks will be timely accomplished to permit an award of a construction contract within the one year implementation phase of the UTP.

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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Deputy General Counsel
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SUBCHAPTER D. TRANSPORTATION FUNDING

43 TAC §16.154, §16.161

STATUTORY AUTHORITY

The amendments and new section are 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, Transportation Code, §201.991, which requires the commission to adopt rules related to the department's unified transportation program and §201.996, which requires the commission to adopt rules that specify the formulas for allocating funds to districts and metropolitan planning organizations.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.991 and §201.996.

§16.154. Transportation Allocation Funding Formulas.

(a) Formula allocations. The commission will, subject to the mandates of state and federal law, allocate funds from program funding Categories 1, 2, 4, 5, 7, 9, and 11, as described in §16.153 of this subchapter (relating to Funding Categories), to the districts and metropolitan planning organizations (MPO) as follows:

(1) Category 1 Preventive Maintenance and Rehabilitation - will be allocated to all districts as an allocation program according to the following formulas:

(A) Preventive maintenance.

(i) Ninety-eight percent for roadway maintenance with 65 percent based on on-system lane miles, and 33 percent based on the pavement distress score Pace factor; and

(ii) Two percent for bridge maintenance based on square footage of on-system span bridge deck area;

(B) Rehabilitation. Thirty-two and one half percent based on three-year average lane miles of pavement distress scores less than 70, 20 percent based on on-system vehicle miles traveled per lane mile, 32.5 percent based on equivalent single axle load miles [~~for~~] on-system[~~, off-system, and interstate~~], and 15 percent based on the pavement distress score Pace factor;

(2) Category 2 Metropolitan and Urban Corridor Projects - will be allocated to MPOs for specific projects in the following manner:

(A) 87 percent to MPOs operating in areas that are transportation management areas, according to the following formula: 30 percent based on total vehicle miles traveled on and off the state highway system, 17 percent based on estimated population within the boundaries of the metropolitan planning area using data derived from the most recent census provided by the U.S. Bureau of the Census (census population), 10 percent based on lane miles on-system, 14 percent based on truck vehicle miles traveled on-system, 7 percent based on percentage of census population below the federal poverty level, 15 percent based on congestion, and 7 percent based on fatal and incapacitating vehicle crashes;

(B) 13 percent to MPOs operating in areas that are not transportation management areas, according to the following formula: 20 percent based on total vehicle miles traveled on and off the state highway system, 25 percent based on estimated population within the boundaries of the metropolitan planning area using data derived from the most recent census provided by the U.S. Bureau of the Census (census population), 8 percent based on lane miles on-system, 15 percent based on truck vehicle miles traveled on-system, 4 percent based on percentage of census population below the federal poverty level, 8 percent based on centerline miles on-system, 10 percent based on congestion, and 10 percent based on fatal and incapacitating vehicle crashes;

(3) Category 4 Statewide Connectivity Corridor Projects - will be allocated to districts as an allocation program for specific corridors selected by the commission based on engineering analysis of three corridor types and, if applicable to the particular corridor type, considering the formula specified in subsection (a)(2) of this section:

(A) Mobility corridors - congestion considerations throughout the state;

(B) Connectivity corridors - two-lane roadways requiring upgrade to four-lane divided roadways to connect the urban areas of the state; and

(C) Strategic corridors - strategic corridors on the state highway network that provide statewide connectivity;

(4) Category 5 Congestion Mitigation and Air Quality Improvement - will be allocated to districts and MPOs as an allocation

program for projects in a nonattainment area population weighted by ozone and carbon monoxide pollutant severity;

(5) Category 7 Metropolitan Mobility and Rehabilitation (TMA) - will be allocated to MPOs operating in areas that are transportation management areas as an allocation program based on the applicable federal formula;

(6) Category 9 Transportation Alternatives - a portion of the funds in this category will be allocated to MPOs serving urbanized areas with populations over 200,000 as an allocation program based on the areas' relative share of population, unless FHWA approves a joint request from the department and the relevant MPOs to use other factors in determining the allocation; and

(7) Category 11 District Discretionary - will be allocated to all districts as an allocation program based on state legislative mandates, but if there is no mandate or the amount of available funding in this category exceeds the minimum required by a mandate, the funding allocation for this category or the excess funding, as applicable, will be allocated according to the following formula: 70 percent based on annual on-system vehicle miles traveled, 20 percent based on annual on-system lane miles, and 10 percent based on annual on-system truck vehicle miles traveled. The commission may supplement the funds allocated to individual districts on a case-by-case basis to cover project cost overruns.

(b) Pace factor calculation. For purposes of subsection (a)(1) of this section, the Pace factor is a calculation used to adjust funding among districts according to increases or decreases in a district's need to improve its pavement distress scores. It will slow the rate of improvement for districts with the highest condition scores and accelerate the rate of improvement for districts with the lowest condition scores. The Pace factor is calculated by:

(1) determining the district with the highest distress score;

(2) determining the deviation of a district's distress score from the highest score;

(3) totaling the deviations for all districts as determined by paragraph (2) of this subsection.

(c) Non-formula allocations. The commission, subject to the mandates of state and federal law and specific requirements contained in other chapters of this title for programs and projects described in subsection (a) of this section, will determine the amount of funding to be allocated to a district, metropolitan planning organization, political subdivision, governmental agency, local governmental body, recipient of a governmental transportation grant, or other eligible entity from each of the following program funding categories described in §16.153 of this subchapter:

(1) Category 3 Non-Traditionally Funded Transportation Projects for specific projects;

(2) Category 6 Structures Replacement and Rehabilitation as an allocation program;

(3) Category 8 Safety Projects generally funded as an allocation program with some specific projects designated under the Safety Bond Program;

(4) Category 9 Transportation Alternatives - of the remaining funds in this category, a portion will be allocated to certain areas of the state, for specific projects, based on the areas' relative share of the population, and a portion may be allocated in any area of the state for specific projects or transferred to other eligible federal programs, as authorized by law;

(5) Category 10 Supplemental Transportation Projects generally funded as an allocation program with some specific projects designated under miscellaneous federal programs;

(6) Category 12 Strategic Priority for specific projects;

(7) Aviation Capital Improvement Program;

(8) Public transportation;

(9) Rail; and

(10) State waterways and coastal waters.

(d) Allocation program. For the purposes of this chapter, the term "allocation program" refers to a type of program funding category identified in the unified transportation program for which the responsibility for selecting projects and managing the allocation of funds has been delegated to department districts, selected administrative offices of the department, and MPOs. Within the applicable program funding category, each district, selected administrative office, or MPO is allocated a funding amount and projects can be selected, developed, and, subject to the base cash flow forecast prepared and published in accordance with §16.152(b) of this subchapter (relating to Cash Flow Forecasts), let to contract with the cost of each project to be deducted from the allocated funds available for that category.

(e) Listing of projects. The department will list the projects being funded from funds allocated under subsections (a)(2) and (3) and (c)(6) of this section (categories 2, 4, and 12, respectively) that the department intends to develop and let during the ten-year unified transportation program (UTP) under §16.105 of this chapter (relating to Unified Transportation Program (UTP)), and reference for each listed project the program funding category to which it is assigned. If a program funding category is an allocation program, the listing is for informational purposes only and contains those projects reasonably expected at the time the UTP is adopted or updated to be selected for development or letting during the applicable period. For the purpose of listing projects in the UTP, "project" means a connectivity or new capacity roadway project. The term does not include a safety project, bridge project, federal discretionary project, maintenance project, preservation project, transportation alternatives project, or locally funded project.

(f) Limitation on distribution. In distributing funds to the districts, metropolitan planning organizations, and other entities described in subsections (a) and (c) of this section, the department may not exceed the planning cash flow forecast prepared and published in accordance with §16.152(a) of this subchapter (relating to Cash Flow Forecasts). In developing and distributing funds for purposes of letting, the department may not exceed the base cash flow forecast prepared and published in accordance with §16.152(b) of this subchapter.

(g) Formula revisions. The commission will review and, if determined appropriate, revise both the formulas and criteria for allocation of funds under subsections (a) - (c) of this section at least as frequently as every four years.

(h) Supplemental allocations. The commission may supplement the funds allocated to individual districts under subsections (a)(1) and (7) of this section in response to special initiatives, safety issues, or unforeseen environmental factors. Supplemental funding under this subsection is not required to be allocated proportionately among the districts and is not required to be allocated according to the formulas specified in subsections (a)(1) and (7) of this section. In determining whether to allocate supplemental funds to a particular district, the commission may consider safety issues, traffic volumes, pavement widths, pavement conditions, oil and gas production, well completion, or any other relevant factors.

(i) Carryover. The executive director may adjust the funds allocated to a category with carryover in that category from the previous year.

§16.161. Ten-Year Programming Flexibility for Certain Categories.

(a) Category 2 Metropolitan and Urban Corridor Projects and Category 4 Statewide Connectivity Corridor Projects. Districts and MPOs may program funding on projects using the full ten-year balance of their respective allocations in categories 2 and 4.

(b) Category 12 Strategic Priority. The commission may authorize the programming of category 12 funds on projects based on and within the constraint of the full ten-year balance of that category.

(c) Subsections (a) and (b) of this section are subject to fiscal and letting constraints, as described in §16.105(b) of this chapter (relating to Unified Transportation Program (UTP)) and §16.152(b) of this subchapter (relating to Cash Flow Forecasts).

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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Becky Blewett
Deputy General Counsel
Texas Department of Transportation
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PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 TAC §§215.150, 215.151, and 215.153 - 215.155 concerning access to the temporary tag database and temporary tag requirements and new 43 TAC §215.505 concerning denial of access to the temporary tag database. The amendments and new section are necessary to implement amended Transportation Code §§503.0626, 503.063, 503.0631, and 503.067, and new §503.0632(f) concerning denial of access to the temporary tag database, management of the temporary tag database, requirements related to the issuance of certain temporary tags without an inspection, and prohibits the display and issuance of unauthorized temporary tags under House Bill (HB) 3927, 87th Legislature, Regular Session (2021). The department has also proposed amendments to 43 TAC §215.152 and §215.158 concerning maximum temporary tag limits in this issue of the *Texas Register.*

EXPLANATION. House Bill 3927 amended Transportation Code §503.0626 and §503.0631 and adds §503.0632 to provide the department with tools to limit the fraudulent misuse of the temporary tag database. The tools include the authority to deny access to the temporary tag database without having to first revoke the dealer's or converter's license and to establish the maximum number of temporary tags that a dealer or converter may issue. Proposed new §215.505 addresses the process for denial of access to the temporary tag database.

In addition, HB 3927 amended Transportation Code §503.0626 and §503.0631 to direct the department to manage the temporary tag database and amended Transportation Code §503.067 to prohibit the display and issuance of unauthorized temporary tags. Proposed amendments to §§215.150, 215.151, 215.153, 215.154, and 215.155 address managing the database and limiting the ability of unauthorized users to obtain and display temporary tags.

Finally, HB 3927 amended Transportation Code §503.063 concerning requirements related to the issuance of buyer's temporary tags to certain vehicles sold out of state or at auction without an inspection, which is addressed in §215.155.

The department met twice with the Motor Vehicle Industry Regulatory Advisory Committee in considering this proposal. The department appreciates the committee member's serious consideration of the issues presented by HB 3927 and the member's comments.

The following paragraphs address the amendments and new section in this proposal.

The amendments to §215.150(a) conform to the amendment requirement in Transportation Code §503.067 that temporary tags must be for an authorized purpose. The amendments to §215.150(b) reference that a dealer's or converter's ability to obtain temporary tags is limited by new Transportation Code §503.0632(a-e) concerning maximum tag limits and §503.0632(f) concerning denial of access to the temporary tag database.

New §215.150(d) establishes requirements to manage access to the temporary tag database. The requirements are consistent with Transportation Code §503.0626 and §503.0631 which, as amended, require the department to manage a secure database and support preventing unauthorized access to the database necessary to implement §503.067.

The amendment to §215.151 adds converters to the procedure for displaying a temporary tag as required by Transportation Code §503.0625.

The amendments to §215.153 are necessary to prevent unauthorized access to temporary tags necessary to implement §503.067. The amendments remove the sample copies of temporary tags from display, because the department is concerned that unauthorized persons may be able to use computer software to manipulate the sample to create a high-quality tag, or at least a better-quality copy of a temporary tag than could be obtained by photography or scanning. Further, having the tags online limit the department's ability to change the design even if requested by law enforcement. As such, the department proposes not to display the design. Law enforcement would be informed of the design and any design changes, and dealers and converters using the database will print the current design for their customers and own needs.

The amendments to §215.154 clarify the use of dealer's tags and support preventing unauthorized access to the database necessary to implement §503.067. The amendment to §215.154(d)(1) adds that designation and informs the reader that Transportation Code §503.062 states the authorized uses of a dealer temporary tag. This avoids the potential incorrect inference that a dealer's tag could be used for any purpose not prohibited in redesignated §215.154(d)(2). The amendments to redesignated

215.154(d)(2)(D) clarify that a dealer's tag cannot be issued for an off-highway vehicle, which are now defined in Transportation Code §551A.001, because off-highway vehicles are not eligible for registration under Transportation Code §502.140. Section 551A.001 defines an off-highway vehicle as an "all-terrain vehicle or recreational off-highway vehicle," a "sand rail," or a "utility vehicle." The amendments to §215.154(e)(3) update the limitation on use of courtesy cars to the current allowed use.

The amendment to §215.155 cites Transportation Code §503.063(i) and (j), which were added by HB 3927 to specifically authorize issuance of buyer's temporary tags to certain vehicles sold out of state or at auction without an inspection. The amendment to §215.155(f) is a nonsubstantive correction. The citation refers to "dealer's tags," which are discussed in §215.154 and not §215.153.

New §215.505 establishes the process for denial of access to the temporary tag database under new Transportation Code §503.0632(f), as added by HB 3927. New §215.505(a) describes the conduct that constitutes "fraudulently obtained temporary tags from the temporary tag database," and is grounds under §503.0632(f), for denial of access to the temporary tag database. New §215.505(b) establishes that the department will deny access to the database 10 days after it sends notice to the dealer or converter that the department has determined the dealer or converter has fraudulently obtained temporary tags from the temporary tag database. The dealer or converter may negotiate with the department during this period. New §215.505(c) provides that the notices will be sent to the dealer's or converter's last known address on the department's records.

New §215.505(d) establishes the appeal process under Subchapter O, Chapter 2301, Occupations Code as required by new §503.0632(f) and HB 3927. The appeal process requires the dealer to submit a request for hearing with the department within 26 days from the date the initial notice is sent to the dealer of converter. Further, as proposed, requesting a hearing will not stay the denial of access.

New §215.505(e) provides that the department may also issue a Notice of Department Decision stating administrative violations as provided in §215.500 concurrently with the notice of denial of access. The subsection is to clarify that the denial of access process based on the department's determination that the dealer or converter has fraudulently obtained temporary tags from the temporary tag database is separate from any administrative action the department may bring against the dealer or converter, even though they may be based on the same facts. New §215.505(f) provides that the denial determination will become final if the dealer or converter does not request a hearing or enter into a settlement agreement with the department within 26 days of the date of the notice denying access to a database.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the proposed amendments and new section are in effect, there will be no significant fiscal impact to the state or local governments as a result of the enforcement or administration of the proposal. There will be no additional costs to the department and the proposed amendments will have no significant impact on revenue collections.

Corrie Thompson, Director of the Enforcement Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal, because the overall number of motor vehicle sales will not be affected.

PUBLIC BENEFIT AND COST NOTE. Ms. Thompson has also determined that, for each year of the first five years the proposed rules are in effect the public benefits include establishing rules to implement HB 3927 and limiting the criminal activity of a small subset of dealers who fraudulently obtain and sell tens of thousands of temporary tags to persons seeking to engage in violent criminal activity, including armed robbery, human trafficking, and assaults on law enforcement; or to criminally operate uninsured and uninspected vehicles as a hazard to Texas motorists and the environment.

Ms. Thompson anticipates that the proposed requirements in proposed amendments to §215.150(d) establishing dealer and converter duties to monitor temporary tag usage, manage account access, and take timely and appropriate actions to maintain system security will have a cost, but further anticipates that most license holders are operating in a businesslike manner and as such any additional cost will be minimal.

The requirements are to manage secure access to the temporary tag database as the license holder would secure any other valuable business asset. The requirements are as follows:

(1) monitoring temporary tag usage;

(2) managing account access; and

(3) taking timely and appropriate actions to maintain system security, including:

(1) establishing and following reasonable password policies, including preventing the sharing of passwords;

(2) limiting authorized users to owners and bona fide employees with a business need to access the database;

(3) removing users who no longer have a legitimate business need to access the system;

(4) securing printed tags and destroying expired tags; and

(5) securing equipment used to access the temporary tag database and print temporary tags.

While implementing the requirements will differ depending on factors such as the number of people the license holder employs, the license holder's sales volume, and the license holder's general organization and business model, the license holder is not required to purchase any special equipment, employ additional persons, or prepare additional reports. Given the vast differences in the approximately 22,000 license holders this proposal will affect, a calculation of costs is impossible. Some may choose to place the requirement on existing management. Others may hire personnel and create systems to monitor multiple licensees across multiple locations. Either of these or other methods are a business decision of the license holder and beyond the scope of the department to determine.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The cost analysis in the Public Benefit and Cost Note section of this proposal has determined that proposed §215.150(d) may result in additional costs for license holders. The department estimates that more than half of the 22,000 affected license holders are small or micro-businesses.

The department has tried to minimize cost to license holders. The requirements in §215.150(d) are designed to be flexible and without a requirement that a license holder incur costs from the

purchase of special equipment, employment of additional persons, or preparation of additional reports. In addition, the proposal does not limit or affect a license holder's ability to sell motor vehicles.

The department has considered not adopting §215.150(d), exempting small and micro-business license holders from §215.150(d), and adopting a limited version of §215.150(d) for small and micro-business license holders. The department rejects all three options. It has been small and micro-business license holders that have misused the temporary tag database and issued the tens of thousands of illegal tags. Further, the requirements of §215.150(d) are minimal. The department, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of proposed §215.150 for a small or micro-business license holder.

TAKINGS IMPACT ASSESSMENT. The department 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 Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed new section is in effect, the proposed rule:

will not create or eliminate a government program;

will not require the creation of new employee positions or the elimination of existing employee positions;

will not require an increase or decrease in future legislative appropriations to the department;

will not require an increase or decrease in fees paid to the department;

will create new regulation establishing dealer and converter duties to monitor temporary tag usage, manage account access, and take timely and appropriate actions to maintain system security; and establishes the creation of a notice and appeal process following a department determination and action denying access to the temporary tag database;

will not expand existing regulations;

will not repeal existing regulations;

will not increase or decrease the number of individuals subject to the rule's applicability; and

will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on December 13, 2021. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §§215.150, 215.151, 215.153 - 215.155

STATUTORY AUTHORITY. The department proposes amendments to §§215.150, 215.151, 215.153, 215.154, and 215.155, and new §215.505 under Occupations Code §2301.705 and Transportation Code §§503.002, 503.0626, 503.0631, and 1002.001.

Occupations Code §2301.705 provides that notice of a hearing involving a license holder must be given in accordance with Chapter 2301 and board rules.

Transportation Code §503.002 authorizes the department to adopt rules to administer Transportation Code Chapter 503.

Transportation Code §503.0626(d) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0626.

Transportation Code §503.0631(e) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0631.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§503.0626, 503.063, 503.0631, 503.0632, and 503.067.

§215.150. Authorization to Issue Temporary Tags.

(a) A dealer that holds a GDN may issue a dealer's temporary tag, buyer's temporary tag, or a preprinted Internet-down temporary tag for authorized purposes only for each type of vehicle the dealer is licensed to sell. A converter that holds a converter's license under Occupations Code, Chapter 2301 may issue a converter's temporary tag for authorized purposes only.

(b) A license holder may issue an applicable dealer's temporary tag, buyer's temporary tag, or converter's temporary tag until:

(1) the department denies access to the temporary tag database under Transportation Code §503.0632(f) and §215.505 of this title (relating to Denial of Dealer or Converter Access to Temporary Tag System);

(2) the license holder issues the maximum number of temporary tags authorized under Transportation Code §503.0632(a)-(d); or

(3) the license is canceled, revoked, or suspended.

(c) A federal, state, or local governmental agency that is exempt under Section 503.024 from the requirement to obtain a dealer general distinguishing number may issue one temporary buyer's tag, or one preprinted Internet-down temporary tag, in accordance with Transportation Code §503.063. A governmental agency that issues a temporary buyer's tag, or preprinted Internet-down temporary tag, under this subsection:

(1) is subject to the provisions of Transportation Code §503.0631 and §503.067 applicable to a dealer; and

(2) is not required to charge the registration fee under Transportation Code §503.063(g).

(d) A dealer or converter is responsible for all use of and access to the applicable temporary tag database under the dealer's or converter's account, including access by any user or unauthorized person. Dealer and converter duties include monitoring temporary tag usage, managing account access, and taking timely and appropriate actions to maintain system security, including:

(1) establishing and following reasonable password policies, including preventing the sharing of passwords;

(2) limiting authorized users to owners and bona fide employees with a business need to access the database;

(3) removing users who no longer have a legitimate business need to access the system;

(4) securing printed tags and destroying expired tags; and

(5) securing equipment used to access the temporary tag database and print temporary tags.

§215.151. Temporary Tags, General Use Requirements, and Prohibitions.

(a) A dealer or converter shall secure a temporary tag to a vehicle in the license plate display area located at the rear of the vehicle, so that the entire temporary tag is visible and legible at all times, including when the vehicle is being operated.

(b) A federal, state, or local governmental agency shall secure a temporary buyer's tag or preprinted Internet-down temporary tag issued under 215.150(c) of this title (relating to Authorization to Issue Temporary Tags) to a vehicle in the license plate display area located at the rear of the vehicle, so that the entire temporary tag is visible and legible at all times, regardless of whether the vehicle is being operated.

(c) All printed information on a temporary tag must be visible and may not be covered or obstructed by any plate holder or other device or material.

(d) A motor vehicle that is being transported using the full mount method, the saddle mount method, the tow bar method, or any combination of those methods in accordance with Transportation Code, §503.068(d), must have a dealer's temporary tag, a converter's temporary tag, or a buyer's temporary tag, whichever is applicable, affixed to the motor vehicle being transported.

§215.153. Specifications for All Temporary Tags.

(a) Information printed or completed on a temporary tag must be in black ink on a white background. Other than for a motorcycle, a completed buyer's, dealer's, converter's, or preprinted Internet-down temporary tag shall be six inches high and at least eleven inches wide. For a motorcycle, the completed buyer's, dealer's, converter's, or preprinted Internet-down temporary tag shall be four inches high and at least seven inches wide.

(b) A temporary tag must be:

(1) composed of plastic or other durable, weather-resistant material; or

(2) sealed in a two mil clear poly bag that encloses the entire temporary tag.

(c) A temporary tag may only be issued and printed from the department's temporary tag database as described in §215.152 of this title (relating to Obtaining Numbers for Issuance of Temporary Tags) and §215.157 of this title (relating to Advance Numbers, Preprinted Internet-down Temporary Tags). [~~must comply with the specifications of the applicable temporary tag identified by the following appendices:~~]

[~~(1) Appendix A-1 - Dealer's Temporary Tag - Assigned to Specific Vehicle;~~]
[Figure: ~~43 TAC §215.153(c)(1)~~]

[~~(2) Appendix A-2 - Dealer's Temporary Tag - Assigned to Agent;~~]
[Figure: ~~43 TAC §215.153(c)(2)~~]

[~~(3) Appendix B-1 - Buyer's Temporary Tag;~~]
[Figure: ~~43 TAC §215.153(c)(3)~~]

[~~(4) Appendix B-2 - Preprinted Internet-down Temporary Tag; and~~]
[Figure: ~~43 TAC §215.153(c)(4)~~]

[~~(5) Appendix C-1 - Converter's Temporary Tag.~~]
[Figure: ~~43 TAC §215.153(c)(5)~~]

§215.154. Dealer's Temporary Tags.

(a) A dealer's temporary tag may be displayed only on the type of vehicle for which the GDN is issued and for which the dealer is licensed by the department to sell.

(b) A wholesale motor vehicle auction license holder that also holds a dealer GDN may display a dealer's temporary tag on a vehicle that is being transported to or from the licensed auction location.

(c) When an unregistered vehicle is sold to another dealer, the selling dealer shall remove the selling dealer's temporary tag. The purchasing dealer may display its dealer temporary tag or its metal dealer's license plate on the vehicle.

(d) A dealer's temporary tag:

(1) may be displayed on a vehicle only as authorized in Transportation Code §503.062; and

(2) may not be displayed on:

(A) [~~(1)~~] a laden commercial vehicle being operated or moved on the public streets or highways;

(B) [~~(2)~~] on the dealer's service or work vehicles;

(C) [~~(3)~~] a golf cart as defined under Transportation Code Chapter 551; or

(D) [~~(4)~~] an [~~all-terrain vehicle, recreational~~] off-highway vehicle [~~, or a utility vehicle~~] as defined under Transportation Code Chapter 551A.

(e) For purposes of this section, a dealer's service or work vehicle includes:

(1) a vehicle used for towing or transporting other vehicles;

(2) a vehicle, including a light truck, used in connection with the operation of the dealer's shops or parts department;

(3) a courtesy car with no signs on the vehicle;

(4) a rental or lease vehicle; and

(5) any boat trailer owned by a dealer or manufacturer that is used to transport more than one boat.

(f) For purposes of subsection (d) of this section, a vehicle bearing a dealer's temporary tag is not considered a laden commercial vehicle when the vehicle is:

(1) towing another vehicle bearing the same dealer's temporary tags; and

(2) both vehicles are being conveyed from the dealer's place of business to a licensed wholesale motor vehicle auction or from a licensed wholesale motor vehicle auction to the dealer's place of business.

(g) As used in this section, "light truck" has the meaning assigned by Transportation Code, §541.201.

(h) A dealer's temporary tag may not be used to operate a vehicle for the personal use of a dealer or a dealer's employee.

(i) A dealer's temporary tag must show its expiration date, which must not exceed 60 days after the date the temporary tag was issued.

(j) A dealer's temporary tag may be issued by a dealer to a specific motor vehicle in the dealer's inventory or to a dealer's agent who is authorized to operate a motor vehicle owned by the dealer.

(k) A dealer that issues a dealer's temporary tag to a specific vehicle must ensure that the following information is placed on the temporary tag:

(1) the vehicle-specific number from the temporary tag database;

(2) the year and make of the vehicle;

(3) the VIN of the vehicle;

(4) the month, day, and year of the temporary tag's expiration; and

(5) the name of the dealer.

(l) A dealer that issues a dealer's temporary tag to an agent must ensure that the following information is placed on the temporary tag:

(1) the specific number from the temporary tag database;

(2) the month, day, and year of the temporary tag's expiration; and

(3) the name of the dealer.

§215.155. Buyer's Temporary Tags.

(a) A buyer's temporary tag may be displayed only on a vehicle from the seller's inventory that can be legally operated on the public streets and highways and for which a sale has been consummated.

(b) A buyer's temporary tag may be displayed only on a vehicle that has a valid inspection in accordance with Transportation Code Chapter 548, unless:

(1) an inspection is not required under Transportation Code §503.063(i) or (j); or

(2) the vehicle is exempt from inspection under Chapter 548.

(c) For a wholesale transaction, the purchasing dealer places on the motor vehicle its own:

(1) dealer's temporary tag; or

(2) metal dealer's license plate.

(d) A buyer's temporary tag is valid until the earlier of:

(1) the date on which the vehicle is registered; or

(2) the 60th day after the date of purchase.

(e) The dealer, or federal, state, or local governmental agency, must ensure that the following information is placed on a buyer's temporary tag that the dealer issues:

(1) the vehicle-specific number obtained from the temporary tag database;

(2) the year and make of the vehicle;

(3) the VIN of the vehicle;

(4) the month, day, and year of the expiration of the buyer's temporary tag; and

(5) the name of the dealer or federal, state, or local governmental agency.

(f) A dealer shall charge a buyer a fee of $5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456. A federal, state, or local governmental agency may charge a buyer a fee of $5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456, or is a vehicle described in §215.154(d)(2)(C) or (D) [~~§215.153(d)(3) or (4)~~] of this chapter (relating to Dealer's Temporary Tags). The fee shall be remitted by a dealer to the county in conjunction with the title transfer, and, if collected, by a federal, state, or local governmental agency, to the county, for deposit to the credit of the Texas Department of Motor Vehicles fund, unless the vehicle is sold by a dealer to an out-of-state resident, in which case:

(1) the dealer shall remit the entire fee to the department for deposit to the credit of the Texas Department of Motor Vehicles fund if payment is made through the department's electronic title system; or

(2) the dealer shall remit the fee to the county for deposit to the credit of the Texas Department of Motor Vehicles fund.

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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Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

43 TAC §215.505

STATUTORY AUTHORITY. The department proposes amendments to §§215.150, 215.151, 215.153, 215.154, and 215.155, and new §215.505 under Occupations Code §2301.705 and Transportation Code §§503.002, 503.0626, 503.0631, and 1002.001.

Occupations Code §2301.705 provides that notice of a hearing involving a license holder must be given in accordance with Chapter 2301 and board rules.

Transportation Code §503.002 authorizes the department to adopt rules to administer Transportation Code Chapter 503.

Transportation Code §503.0626(d) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0626.

Transportation Code §503.0631(e) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0631.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§503.0626, 503.063, 503.0631, 503.0632, and 503.067.

§215.505. Denial of Dealer or Converter Access to Temporary Tag System.

(a) In this section, "fraudulently obtained temporary tags from the temporary tag database" means a dealer or converter account user misusing the temporary tag database authorized under Transportation Code §503.0626 or §503.06321 to obtain:

(1) an excessive number of temporary tags relative to dealer sales;

(2) temporary tags for a vehicle or vehicles not in the dealer's or converter's inventory (a vehicle is presumed not to be in the dealer's or converter's inventory if the vehicle is not listed in the relevant monthly Vehicle Inventory Tax Statement); and

(3) access to the temporary tag database for a fictitious user or person using a false identity.

(b) The department shall deny a dealer or converter access to the temporary tag database 10 calendar days from the date the department sends notice electronically and by certified mail to the dealer or converter that the department has determined, directly or through an account user, the dealer or converter has fraudulently obtained temporary tags from the temporary tag database. A dealer or converter may seek a negotiated resolution with the department within the 10-day period by demonstrating corrective actions taken or that the department's determination was incorrect. If a resolution is not agreed to prior to the end of the 10-day period, the department will deny access to the temporary tag database.

(c) Notice shall be sent to the dealer's or converter's last known email and mailing address in the department's records.

(d) A dealer or converter may request a hearing on the denial as provided by Subchapter O, Chapter 2301, Occupations Code. The request must be submitted in writing and request a hearing under this section. The department must receive a written request for a hearing within 26 days of the date of the notice denying access to the database. The request for a hearing does not stay the 10-day period or denial of access under subsection (b) of this section. A dealer may continue to seek a negotiated resolution with the department after a request for hearing has been submitted under this subsection by demonstrating corrective actions taken or that the department's determination was incorrect.

(e) The department may also issue a Notice of Department Decision stating administrative violations as provided in §215.500 concurrently with the notice of denial of access under this section. A Notice of Department Decision may include notice of any violation, including a violation listed under subsection (a) of this section.

(f) A department determination and action denying access to the temporary tag database becomes final if the dealer or converter does not request a hearing or enter into a settlement agreement with the department within 26 days of the date of the notice denying access to a database.

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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Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §215.152, §215.158

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 TAC §215.152 and §215.158, concerning the maximum number of temporary tags that a dealer or converter may issue from the temporary tag database. The amendments are necessary to implement amended Transportation Code §503.0626 and §503.0631 and new §503.0632(a)-(e) under House Bill 3927, 87th Legislature, Regular Session (2021). The department has also proposed amendments to 43 TAC §§215.150, 215.153, 215.154, and 215.155, concerning access to the temporary tag database and temporary tag requirements and new 43 TAC §215.505, concerning denial of access to the temporary tag database in this issue of the *Texas Register.*

EXPLANATION. House Bill 3927 amended Transportation Code and added new §503.0632(a)-(e) to authorize the department to establish by rule the maximum number of temporary tags that a dealer or converter may obtain in a calendar year under §§503.062, 503.0625, or 503.063. The maximum tag limits proposed in §215.152 are intended to prevent dealers and converters from fraudulently issuing an excessive amount of temporary tags while allowing legitimate businesses to continue operations unimpacted.

The department met with the Motor Vehicle Industry Regulatory Advisory Committee twice in considering this proposal. The department appreciates the committee members' serious consideration of the issues presented by HB 3927 and the members' comments.

The department analyzed data from multiple department systems and developed a model that proposes to consider the factors identified in §503.0632(b) to greatly reduce the volume of fraudulent tag issuance, yet balances the business needs of legitimate dealers and converters. Implementation of setting the maximum tag limits under HB 3927 involves programming to multiple department systems, which the department intends to leverage to also identify potential fraudulent tag issuance earlier even though the possible volume will be limited for an individual dealer or converter.

The department recognizes that implementing fraud prevention and detection mechanisms should not adversely impact dealers or converters that are not fraudulently issuing temporary tags. The system proposed by the department is intended to provide dealers or converters with the number of temporary tags they need to operate without having to request additional tags. Also, by using existing department systems, the proposal adds no additional costs for a dealer or converter and creates no new required activities or reports for dealers.

The department also recognizes all dealers and converters are not the same. As such, the proposal considers actual temporary tag issuance specific to each established dealer and converter

as a minimum allotment and then provides an increase based on each dealer's and converter's licensing tenure, as well as an increase for growth, resulting in a maximum number of temporary tags unique to each dealer and converter.

New licensees have been considered as well, and the proposal provides an initial allotment of temporary tags based on the type of dealer and whether the dealer or converter is a first-time licensee, existing licensee moving locations, or an existing licensee establishing an additional location to ensure a maximum tag limit appropriate to each situation.

The following paragraphs address the amendments in this proposal.

The amendment to §215.152(b)(1) is a response to fraudulent activity and clarifies that information entered to obtain a temporary tag must be true and accurate.

The amendments to §215.152 add new subsections (c) - (l) to establish the maximum number of temporary tags that may be allotted to a dealer or converter. In summary, §215.152(c) - (e) implement Transportation Code §503.0632(b) and establish the calculated number of temporary tags that a dealer or converter past its initial license period will receive from the department with no dealer or converter action. Section 215.152(f) establishes a maximum tag limit for newly licensed dealers and converters. Section 215.152(i) creates the process for dealers to request additional tags. Section 215.152(g), (h), and (j) - (l) address general matters related to the maximum number of temporary tags. Section 215.2 defines terms used in Chapter 215.

Section 215.152(c) establishes the calculation for determining the number of buyer's temporary tags a dealer will receive. Section 215.152(c)(1) creates the base of the calculation based on activity related to sales implementing §503.0632(b)(1)(B). The base starts with the greater of the dealer's highest number of in-state buyer temporary tags issued or title transactions recorded in the Registration and Title System (RTS) over the prior three fiscal years. The department is using state fiscal years, because it will allow the department time to collect data, determine the multipliers, test the system, and be ready to release the maximum limits prior to the January 1st calendar year implementation date. All months will be counted towards the maximum limit although a lag will exist. To limit potential fraudulent action, the department will limit the number of temporary tags issued in the calculation to twice the number of RTS transactions. The department then adds to the in state total the number of out-of-state temporary tags issued to set the base.

Section 215.152(c)(2) then multiplies the base total by a time in business factor to implement §503.0632(b)(1)(A). The anticipated factor is based on the percentage of years the dealer has been in business over the last 10 years. For example, a dealer that has been in business for five years would receive a 50 percent addition to the base. Thus, a hypothetical dealer that had a calculated base of 100 tags and was in business for five years would have allotted 150 buyer's tags.

Section 215.152(c)(3) then multiplies the base total after the addition of the time in business factor by a determined market growth rate factor of not less than zero to implement §503.0632(b)(1)(C). The factor is based on the percentage growth in the market over the prior three fiscal years. For example, the department's current analysis beginning in 2018 indicates a 9.7 percent growth rate. Thus, the hypothetical dealer would have an additional 15 temporary tags for a total of 165, which is 65 more than the dealer used in any of the three prior years.

Section 215.152(c)(4) is used here as a remedy if the standard formula is not working based on sudden changes in the market to implement §503.0632(b)(2)-(4). This provision allows the department to make adjustments to increase the number of buyer's temporary tags to all dealers in the state, or a more limited area, if the standard formula is lagging behind. For example, a sudden increase in sales after a slow market period may require a separate temporary increase in the number of buyer's temporary tags for all dealers until the increased sales data can be incorporated into the standard calculation. Remedies for individual dealer situations are addressed in §215.152(i).

Section 215.152(d) and (e) apply to dealer and converter temporary tags. The subsections are similar in construction to the §215.152(c) in that the subsections use prior temporary tag data to establish a base and then increase the allotment with multipliers based on time in business and growth rate. The growth rate is based on the actual growth in the use of dealer or converter tags. Also, §215.152(d) and (e) have a similar provision to §215.152(c)(4) to make adjustments to a rapidly changing market.

Section 215.152(f) establishes the number of allotted buyer, dealer, and converter tags for new licensees. The allotment is by an annual block, because new dealers or converters will have no prior history to establish a base or significant time in operation to establish a multiplier. The annual block allotment is not subject to the time in operation or annual growth multiplier. The period of allotment will run through the dealer's or converter's first two-year license period and end the following December 31st. This will provide information to calculate a base, a three-year multiplier, and the annual growth rate multiplier. However, even with this information, many dealers and converters may see a significant drop in the number allotted temporary tags depending on the base number.

Section 215.152(g) and (h) are added to avoid the situation under §215.152(f) in which an existing dealer or converter could inflate the number of temporary tags they are allotted or be limited in its ability to expand. Section 215.152(g) provides that an existing dealer or converter that is moving its operations from one location to a different location will continue with its allotment of temporary tags. The dealer or converter will not be issued a block allotment under subsection (f). Section 215.152(h) provides that an existing dealer or converter opening an additional location will receive an allotment based on the allotment provided to existing locations. Section 215.152(g) and (h) do not limit a dealer or converter from requesting additional temporary tags under §215.152(i).

Section 215.152(i) establishes the process under which a dealer or converter may request additional temporary tags as required by new Transportation Code §503.0632(d). Section 215.152(i) establishes that the dealer may request additional tags after 50 percent of the calendar allotment have been used. Also, requests will be made through the eLICENSING system.

Section 215.152(i)(1) establishes that the dealer or converter is required to demonstrate that the need for additional temporary tags results from business operations, including anticipated needs, as required by §503.0632(c), and lists some types of information that may be presented, including evidence of factors under §503.0632(b) related to the individual license holder. The list is not exclusive. Section 215.152(i)(2) establishes

that the department will consider the information provided but may also consider any additional information that the department considers to be relevant to making a determination. As in §215.152(i)(1), a non-exclusive list of information that the department may consider is listed in §215.152(i)(2).

Section 215.152(i)(3) establishes that the department is not bound to issue only the number of additional temporary tags requested by the dealer or converter and may issue more or less than the request. A decision to grant the request on whole or in part does not constitute a denial of the request. Section 215.152(i)(4) establishes that a denied request may be appealed to the director of the department's Motor Vehicle Division. The director's decision is final. Section 215.152(i)(5) establishes that once a denial is final, a dealer or converter may only submit a subsequent request for additional temporary tags during that calendar year if the dealer or converter is able to provide additional information not considered in the prior request.

Section 215.152(j) provides that an allotment change under §215.152(i) does not result in a change to the base allotment in future years. That number will be calculated under §215.152(c), (d) or (e), or allotted under §215.152(f). Ultimately if the additional number of temporary tags are used, that number will become the base. Section 215.152(k) provides that the department will continue to monitor for temporary tag usage that suggests that misuse or fraud has occurred as described in Transportation Code §§503.038, 503.0632(f), or 503.067. Section 215.152(l) provides that unused temporary tags do not roll over to subsequent years. The base calculations will be done annually.

The amendments to §215.158(d) address the changes in Transportation Code §503.0626 and §503.0631 that removed the requirement for the temporary tag databases to be within the department's Vehicle Titles and Registration Division. The department has assigned the function to the department's Motor Vehicle Division. Otherwise, the proposal does not change the process for determining preprinted internet-down tags. The amendments to §215.158 also add new subsection (e), which clarifies that a preprinted internet-down tag will apply against the dealer's maximum number of allotted buyer's tags when the preprinted tag is entered into the temporary tag database as a sale. Preprinting the tags will not reduce the maximum number of allotted buyer's tags.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the proposed amendments and new section are in effect, there will be no significant fiscal impact to the state or local governments as a result of the enforcement or administration of the proposal. There will be no significant costs to the department and the proposed amendments will have no significant impact on revenue collections.

Monique Johnston, Director of the Motor Vehicle Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal, because the overall number of motor vehicle sales should not be affected.

PUBLIC BENEFIT AND COST NOTE. Ms. Johnston has also determined that, for each year of the first five years the proposed rules are in effect, the public benefits include establishing rules to implement HB 3927 and limiting the criminal activity of a small subset of dealers who fraudulently obtain and sell tens of thousands of temporary tags to persons seeking to engage in violent criminal activity, including armed robbery, human trafficking, and assaults on law enforcement; or to criminally operate uninsured and uninspected vehicles as a hazard to Texas motorists and the environment. In addition, the department's calculations indicate that the numbers will be generous so as not to impede commerce by long time dealers and converters or new entrants to the marketplace; or burden license holder and department resources with unnecessary reviews. The proposal is to limit the unauthorized sale of temporary tags and should not limit or affect a license holder's ability to sell motor vehicles or otherwise conduct legitimate business.

Ms. Johnston anticipates that the proposal will create no additional costs for license holders. A license holder is not required to purchase any special equipment, employ additional persons, or prepare additional reports. The department will gather the information and make the necessary calculations to determine the maximum number of temporary tags each dealer or converter will be allotted. To the extent a request for additional tags is necessary, the department expects the matter can be handled via the eLICENSING system with primarily the presentation of sales information that shows the tags have been legitimately issued and that more are needed. This information should be existing and readily available to the license holder and the use of the eLICENSING system will expedite the review process by the department.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The cost analysis in the Public Benefit and Cost Note section of this proposal has determined that proposed §215.152 and §215.158 will not result in additional costs for license holders, including any small businesses, micro-businesses, or rural communities. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

Even if a cost were determined, the department has tried to minimize cost to license holders. The requirements in §215.152 are designed to be flexible and without a requirement that a license holder incur costs from the purchase of special equipment, employment of additional persons, or preparation of additional reports. In addition, the proposal is not to limit or affect a license holder's ability to sell motor vehicles.

To the extent the department was to perform a regulatory flexibility analysis under Government Code §2006.002, the department would consider the alternatives of not adopting the amendments to §215.152, exempting small and micro-business license holders from the amendments to §215.152, and adopting a limited version of §215.152 for small and micro-business license holders. The department would reject all three options. It has been small and micro-business license holders that have misused the temporary tag database and issued the tens of thousands of illegal tags. Further, the requirements of §215.152 are minimal. The department, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of proposed §215.150 for a small or micro-business license holder.

TAKINGS IMPACT ASSESSMENT. The department 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 Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed new section is in effect, the proposed rule:

will not create or eliminate a government program;

will not require the creation of new employee positions or the elimination of existing employee positions;

will not require an increase or decrease in future legislative appropriations to the department;

will not require an increase or decrease in fees paid to the department;

will create new regulation establishing the process for determining the maximum number of temporary tags that may be allocated to dealers and converters and the procedures for requesting additional tags;

will not expand existing regulations;

will not repeal existing regulations;

will not increase or decrease the number of individuals subject to the rule's applicability; and

will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on December 13, 2021. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments to §215.152 and §215.158 under Transportation Code §§503.002, 503.0632, and 1002.001.

Transportation Code §503.002 authorizes the department to adopt rules to administer Transportation Code Chapter 503.

Transportation Code §503.0632(a) provides that the department by rule may establish the maximum number of temporary tags that a dealer or converter may obtain in a calendar year under §§503.062, 503.0625, or 503.063.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§503.062, 503.0625, 503.063, and 503.0632(a)-(e).

§215.152. Obtaining Numbers for Issuance of Temporary Tags.

(a) A dealer, a federal, state, or local governmental agency, or a converter is required to have internet access to connect to the temporary tag databases maintained by the department.

(b) Except as provided by §215.157 of this title (relating to Advance Numbers, Preprinted Internet-down Temporary Tags), before a temporary tag may be issued and displayed on a vehicle, a dealer, a federal, state, or local governmental agency, or converter must:

(1) enter in the temporary tag database true and accurate information about the vehicle, dealer, converter, or buyer, as appropriate; and

(2) obtain a specific number for the temporary tag.

(c) The department will inform each dealer annually of the maximum number of buyer's temporary tags the dealer is authorized to issue during the calendar year under Transportation Code §503.0632. The number of buyer's temporary tags allocated to each dealer by the department will be determined based on the following formula:

(1) Sales data determined from the department's systems from previous three fiscal years. A dealer's base number will contain the greater of:

(A) the maximum number of in-state buyer's temporary tags issued during previous fiscal years, or

(B) the maximum number of title transactions processed through the Registration and Title System during previous fiscal years; and

(C) the addition of the maximum number of out-of-state buyer's temporary tags issued during previous fiscal years; except

(D) the dealer's base number will be limited to an amount that is not more than two times the number of title transactions identified in subparagraph (B) of this paragraph.

(2) a multiplier based on the dealer's time in operation; and

(3) the total value of paragraphs (1) and (2) of this subsection, multiplied by the expected annual growth rate percentage, not less than zero, to determine the buyer's temporary tag allotment; and in addition:

(4) the department may increase the determined allotment of buyer's temporary tags for dealers in the state, in a geographic or population area, or in a county, based on:

(A) changes in the market;

(B) temporary conditions that may affect sales; and

(C) any other information the department considers relevant.

(d) The department will inform each dealer annually of the maximum number of agent temporary tags and vehicle specific temporary tags the dealer is authorized to issue during the calendar year under Transportation Code §503.0632. The number of agent temporary tags and vehicle specific temporary tags allocated to each dealer by the department, for each tag type, will be determined based on the following formula:

(1) dealer temporary tag data for agent temporary tags and vehicle specific temporary tags determined from the department's systems from previous three fiscal years. A dealer's base number will contain the maximum number of dealer temporary tags issued during previous fiscal years;

(2) a multiplier based on the dealer's time in operation; and

(3) the total value of paragraphs (1) and (2) of this subsection, multiplied by the expected annual growth rate percentage, not less than zero, to determine the dealer's temporary tag allotment; and in addition:

(4) the department may increase a dealer's allotment of agent temporary tags and vehicle specific temporary tags for dealers in the state, in a geographic or population area, or in a county, based on:

(A) changes in the market;

(B) temporary conditions that may affect sales; and

(C) any other information the department considers relevant.

(e) The department will inform each converter annually of the maximum number of temporary tags the converter is authorized to issue during the calendar year under Transportation Code §503.0632. The number of temporary tags allocated to each converter by the department will be determined based on the following formula:

(1) converter temporary tag data determined from the department's systems from previous three fiscal years. A converter's base number will contain the maximum number of converter temporary tags issued during previous fiscal years;

(2) A multiplier based on the converter's time in operation; and

(3) the total value of paragraphs (1) and (2) of this subsection, multiplied by the expected annual growth rate percentage, not less than zero, to determine the converter's temporary tag allotment.

(4) The department may increase a converter's allotment of converter temporary tags for converters in the state, in a geographic or population area, or in a county, based on:

(A) changes in the market;

(B) temporary conditions that may affect sales; and

(C) any other information the department considers relevant.

(f) A dealer or converter that is licensed after the commencement of a calendar year shall be authorized to issue the number of temporary tags allotted in this subsection prorated on all or part of the remaining months until the commencement of the calendar year after the dealer's or converter's initial license expires. The allocations shall be as determined by the department in granting the license, but not more than:

(1) 600 temporary tags for a franchised dealer per each tag type, buyer's temporary tags, agent temporary tags, and vehicle specific tags;

(2) 300 temporary tags for a nonfranchised dealer per each tag type, buyer's temporary tags, agent temporary tags, and vehicle specific tags; and

(3) A converter will be allocated 600 temporary tags.

(g) An existing dealer or converter that is moving its operations from one location to a different location will continue with its allotment of temporary tags and not be allocated temporary tags under subsection (f) of this section.

(h) An existing dealer or converter opening an additional location will receive a maximum allotment based on the allotment provided to existing locations.

(i) After using 50 percent of the allotted maximum number of temporary tags, a dealer or converter may request an increase in the number of temporary tags by submitting a request in the department's eLICENSING system.

(1) The dealer or converter must provide information demonstrating the need for additional temporary tags results from business operations, including anticipated needs, as required by §503.0632(c). Information may include documentation of sales and tax reports filed as required by law, information of anticipated need, or other information of the factors listed in §503.0632(b).

(2) The department shall consider the information presented and may consider information not presented that may weigh for or against granting the request that the department in its sole discretion determines to be relevant in making its determination. Other relevant information may include information of the factors listed in §503.0632(b), the timing of the request, and the applicant's temporary tag activity.

(3) The department may allocate a lesser or greater number of additional temporary tags than the amount requested by the dealer or converter. Allocation of a lesser or greater number of additional temporary tags is not a denial of the request.

(4) If a request is denied, a dealer or converter may appeal the denial to the Director of the Motor Vehicle Division whose decision is final.

(5) Once a denial is final, a dealer or converter may only submit a subsequent request for additional temporary tags during that calendar year if the dealer or converter is able to provide additional information not considered in the prior request.

(j) A change in the allotment under subsection (i) of this section does not create a dealer or converter base for subsequent year calculations.

(k) The department may at any time initiate an enforcement action against a dealer or converter if temporary tag usage suggests that misuse or fraud has occurred as described in Transportation Code §§503.038, 503.0632(f), or 503.067.

(l) Unused dealer or converter tag allotments from a calendar year do not roll over to subsequent years.

§215.158. General Requirements and Allocation of Preprinted Internet-down Temporary Tag Numbers.

(a) The dealer, or a federal, state, or local governmental agency, is responsible for the safekeeping of preprinted Internet-down temporary tags and shall store them in a secure place, and promptly destroy any expired tags. The dealer, or a federal, state, or local governmental agency shall report any loss, theft, or destruction of preprinted Internet-down temporary tags to the department within 24 hours of discovering the loss, theft, or destruction.

(b) A dealer, or a federal, state, or local governmental agency, may use a preprinted Internet-down temporary tag up to 12 months after the date the preprinted Internet-down temporary tag is created. A dealer, or a federal, state, or local governmental agency, may create replacement preprinted Internet-down temporary tags up to the maximum allowed, when:

(1) a dealer, or a federal, state, or local governmental agency, uses one or more preprinted Internet-down temporary tags and then enters the required information in the temporary tag database after access to the temporary tag database is again available; or

(2) a preprinted Internet-down temporary tag expires.

(c) The number of preprinted Internet-down temporary tags that a dealer, or federal, state, or local governmental agency, may create is equal to the greater of:

(1) the number of preprinted Internet-down temporary tags previously allotted by the department to the dealer or a federal, state, or local governmental agency;

(2) 30; or

(3) 1/52 of the dealer's, or federal, state, or local governmental agency's, total annual sales.

(d) For good cause shown, a dealer, or a federal, state, or local governmental agency, may obtain more than the number of preprinted Internet-down temporary tags described in subsection (c) of this section. The director of the Motor Vehicle Division [~~Vehicle Titles and Registration Division~~] of the department or that director's delegate may

approve, in accordance with this subsection, an additional allotment of preprinted Internet-down temporary tags for a dealer, or a federal, state, or local governmental agency, if the additional allotment is essential for the continuation of the dealer's, or a federal, state, or local governmental agency's, business. The director of the Motor Vehicle Division [~~Vehicle Titles and Registration Division~~] of the department, or a federal, state, or local governmental agency, or that director's delegate will base the determination of the additional allotment of preprinted Internet-down temporary tags on the dealer's, or a federal, state, or local governmental agency's, past sales, inventory, and any other factors that the director of the Motor Vehicle Division [~~Vehicle Titles and Registration Division~~] of the department or that director's delegate determines pertinent, such as an emergency. A request for additional preprinted Internet-down temporary tags must specifically state why the additional preprinted Internet-down temporary tags are necessary for the continuation of the applicant's business.

(e) Preprinted Internet-down temporary tags created under subsection (c) of this section apply to the maximum tag limit established in §215.152 of this title (relating to Obtaining Numbers for Issuance of Temporary Tags) when the preprinted tag is entered into the temporary tag database as a sale.

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 November 1, 2021.

TRD-202104374
Tracey Beaver
General Counsel
Texas Department of Motor Vehicle
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For further information, please call: (512) 465-5665

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 TAC §§217.2, 217.4, 217.23, 217.28, 217.36, 217.45, 217.46, and 217.89, concerning titling and registering motor vehicles. The amendments to §§217.4, 217.23, 217.28, 217.45, 217.46, and 217.89 are necessary to implement amended Transportation Code §§501.023, 501.0234, 501.030, 502.040, 502.041, 502.407, 520.006, and 521.144 authorizing registration and title applications to be processed by any county tax assessor-collector willing to accept the application under Senate Bill (SB) 876, 87th Legislature, Regular Session (2021). The amendment to §217.36 is necessary to complete the implementation of Transportation Code §707.20 and §707.21 under House Bill (HB) 1631, 86th Legislature, Regular Session (2019) by removing obsolete references to photographic traffic signal enforcement programs. The amendment to §217.2 removes the term "identification certificate" as a defined term and is nonsubstantive.

EXPLANATION. Senate Bill 876 expands title and registration services beyond those county tax assessor-collectors required to accept a title or registration application in statute to any county tax assessor-collector willing to accept the application. Proposed §§217.4, 217.23, 217.28, 217.45, 217.46, and 217.89 address the expansion by adding a reference to "a county tax assessor-collector who is willing to accept the application" to those existing sections that specified a county tax assessor-collector. Sections that did not specify a county tax assessor-collector or just the process have not been amended.

The department met with the Customer Service Advisory Committee twice in considering this proposal. The department appreciates the committee members' serious consideration of the issues presented by SB 876 and the members' comments.

Implementation of SB 876 also involves significant programming modifications to the department's Registration and Title System (RTS) to enable the routine processing of out of county applications and the distribution of fees as specified in amended Transportation Code §520.006, which applies if a willing county tax assessor-collector is collecting fees and processing the application on behalf of a county tax assessor-collector who is designated by statute to process the application.

The following paragraphs address the amendments in this proposal.

The amendment to §217.2 removes the term "identification certificate" as a defined term and redesignates the following definitions accordingly. The term is never used alone as a defined term. The term is used in multiple sections of Chapter 217. It usually refers to a document that is then described as a form of personal identification such as a driver's license or identification card, but not in a consistent manner. In §217.4 and §217.89, the term is used and then described similarly to its defined use in §217.2, as relating to a vehicle inspection under Transportation Code Chapter 548 and §501.030. Chapter 548 refers to the document as a "vehicle inspection report." As such, the term is unnecessary as a defined term because each use redefines the term.

The amendment to §217.4(b)(1) removes the statement "as selected by the applicant." In this section, the term "applicant" refers to the owner or purchaser of the vehicle. The change conforms the section with SB 876, which repeals Transportation Code §501.023(e) and §501.0234(e), which required the purchaser to choose the county the title application was to be filed in. The amendment to §217.4(b)(2) conforms the section with the SB 876 "any willing county" amendment to Transportation Code §501.023(a). The amendment to §217.4(c)(4) removes the requirement for the applicant to provide the seller's mailing address, which is not required in statute or the applicable department form. The amendment to §217.4(d)(4) replaces the term "identification certificate" with "vehicle inspection report" based on the reasons addressed in the prior discussion of the amendment to §217.2.

The amendments to §217.23(c) and (d) are necessary to conform the section with the SB 876 any willing county amendment to Transportation Code §502.040 and §502.041.

The amendments to §217.28(a) and (c) are necessary to conform the section with the SB 876 any willing county amendment to Transportation Code §502.041. The amendment also adds new §217.28(f) to create a definition of a closed county by rule for purposes of Transportation Code §502.407(c), as required by SB 876. Proposed §217.28(f) is based on the prior closed definition in §217.4(b)(2), which is being amended as previously discussed in this proposal to conform §217.4 to Transportation Code §501.023 as amended by SB 876. The amendment to §217.28(e)(5) replaces the existing sentence, because proration is covered in §217.45(d)(2). Additionally, the department proposes nonsubstantive amendments to §217.28(b), (c), and (d)

to conform to current statutory references by replacing the term "license plate" with the term registration and otherwise referring to "registration renewal notice" and clarifying that an applicant may also renew a vehicle registration via the internet without a registration renewal notice.

The amendments to §217.36(b) and (d) are necessary to remove obsolete references to photographic traffic signal enforcement programs. House Bill 1631 prohibited the use of such programs with the enactment of Transportation Code §707.20 and §707.21. The department timely implemented HB 1631 and ceased the prohibited actions; however, a change was not made to the rule to remove the provisions.

The amendments to §217.45(b)(3), (d)(3)(B) and (E), (e)(1)(A), and (f)(1) are necessary to conform the section with the SB 876 any willing county amendment to Transportation Code §502.040 and §502.041, including by changing the reference from "the" to "a" county tax assessor-collector. The department has also proposed amending §217.45(f)(1) to remove the reference to log loader license plates in a replacement paragraph, because log loader plates cannot be replaced.

The amendments to §217.46(d)(3), (e)(1), and (f) are necessary to conform the section with the SB 876 any willing county amendment to Transportation Code §502.041. The §217.46(d)(3) amendment removes the reference to "as indicated on the License Plate Renewal Notice" because an "appropriate" county may be a willing county. Similarly, §217.46(f) amendment removes the requirement to go to "the county in which the owner resides" for replacement license plates. The amendments to §217.46(c)(1)(C) and (4) substitute the term "vehicle identification number" for "motor number." The amendment to §217.46(c)(3)(B)(ii) removes the requirement for "tire size" because the department does not collect the information in this context. The amendments to §217.46(d)(2), (3), and (4) conform to current statutory references by replacing the term "license plate renewal notice" with the term "registration renewal notice." Finally, the amendment to §217.46(d)(2) also replaces the word "mail" with "send" should additional distribution methods be adopted in the future.

The amendment to §217.89(b) is necessary to conform the section with the SB 876 any willing county amendment to Transportation Code §501.023(a). The amendments to §217.89(c) and (d)(3)(B) are based on a review of the enacting statute HB 3588, 78th Legislature, Regular Session (2003), which established the $65 rebuilder fee and submission requirements. House Bill 3588 did not have a savings clause for the prior inspections. The department is proposing to apply the change prospectively and not to any existing title issued under the process. The amendments to §217.89(d)(2)(D) and (G) are to update the rule to conform with the existing process that does not require the owner's address, but does require the rebuilder's name, address, and signature. The amendments to §217.89(d)(3)(A) update the requirement to refer to the "authorization or certificate number and the date of inspection" instead of a "sticker" number and "expiration." The amendment to §217.89(d)(5) updates the statutory reference to Transportation Code §502.046, which was transferred, redesignated, and amended from Transportation Code §502.153 by HB 2357 Acts 2011, 82nd Legislature, Regular Session (2012).

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the proposed new section will be in effect, there will be a one-time technology implementation cost of $70,000 in the first year to implement programming for the department's automated systems, and that while SB 876 could result in shifts of which counties perform the transactions and receive registration and title fees, SB 876 and this proposal do not alter the overall number of applications or revenues that would be collected. Therefore, there is no fiscal impact to the state or local governments as a result of the enforcement or administration of the proposal.

Roland D. Luna, Sr., Director of the Vehicle Titles and Registration Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal, because the overall number of applications will not be affected.

PUBLIC BENEFIT AND COST NOTE. Mr. Luna has also determined that, for each year of the first five years the proposed rules are in effect, the public benefits include establishing rules to implement SB 876 and the options it creates for vehicle owners to register and title their vehicles when they are away from their county of residence or another county's tax office is more convenient to their location. The amendment to §217.36 removes obsolete rule text that may be confusing to readers.

Mr. Luna anticipates that there will be no additional costs on a regulated person to comply with these rules because the rules do not establish any additional requirements on a regulated person beyond the requirements of statute.

The sections implementing SB 876 allow a county tax assessor-collector to choose to accept out of county applications, which may generate costs, but those are business decisions that result from the statute not from the rule. Likewise, a dealer or owner has the choice to apply for title and initial registration, or registration renewal, in a statutorily designated county or a willing county. Costs may result from those business decisions, but they arise from the statute not the rule.

The removal of obsolete language in §217.36 to comply with statute does not result in a cost.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002, the department has determined that the proposed amended sections will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

The proposal amends §§217.4, 217.23, 217.28, 217.45, 217.46, and 217.89 to comply with statute and imposes no requirements not specified in statute. In addition, SB 876 does not authorize the department to use its discretion in implementing the SB 876 requirements.

The removal of obsolete language in §217.36 to comply with statute does not result in a cost or the need for a regulatory flexibility analysis.

The department has determined that the proposed amended sections will not have a financial effect, on any small businesses, micro-businesses, or rural communities. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT. The department 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 con-

stitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed new section is in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the department;

- will not require an increase or decrease in fees paid to the department;

- will not create new regulation;

- will not expand existing regulations;

- will repeal existing regulations in §217.36;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on December 13, 2021. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.2, §217.4

STATUTORY AUTHORITY. The department proposes amendments to §217.2 and §217.4 under Transportation Code §§501.0041, 502.0021, 520.003, and 1002.001.

- Transportation Code §501,0041 authorizes the department to adopt rules to administer Transportation Code Chapter 501.

- Transportation Code §502.0021 authorizes the department to adopt rules to administer Transportation Code Chapter 502.

- Transportation Code §520.003 authorizes the department to adopt rules to administer Transportation Code Chapter 520,

- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§501.023, 501.0234, 501.030, 502.040, 502.041, 502.407, 520.006, 521.144, 707.020 and 707.021.

§217.2. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(11) [~~Identification certificate--A form issued by an inspector of an authorized safety inspection station in accordance with Transportation Code, Chapter 548.~~]

[~~(12)~~] Implements of husbandry--Farm implements, machinery, and tools used in tilling the soil, including self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals. This term does not include an implement unless it is designed or adapted for the sole purpose of transporting farm materials or chemicals. This term does not include any passenger car or truck. This term does include a towed vehicle that transports to the field and spreads fertilizer or agricultural chemicals; or a motor vehicle designed and adapted to deliver feed to livestock.

(12) [~~(13)~~] Manufacturer's certificate of origin--A form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner and when presented with an application for title showing on appropriate forms prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

(13) [~~(14)~~] Moped--A motor vehicle as defined by Transportation Code, §541.201.

(14) [~~(15)~~] Motor vehicle importation form--A declaration form prescribed by the United States Department of Transportation and certified by United States Customs that relates to any motor vehicle being brought into the United States and the motor vehicle's compliance with federal motor vehicle safety standards.

(15) [~~(16)~~] Non-United States standard motor vehicle--A motor vehicle not manufactured in compliance with federal motor vehicle safety standards.

(16) [~~(17)~~] Obligor--An individual who is required to make payments under the terms of a support order for a child.

(17) [~~(18)~~] Off-highway vehicle--A motor vehicle as defined by Transportation Code, §551A.001.

(18) [~~(19)~~] Person--An individual, firm, corporation, company, partnership, or other entity.

(19) [~~(20)~~] Recreational off-highway vehicle or ROV--A motor vehicle as defined by Transportation Code, §551A.001, and designed primarily for recreational use. The term does not include a "utility vehicle" as defined by Transportation Code, §551A.001, or a self-propelled, motor-driven vehicle designed or marketed by the manufacturer primarily for non-recreational uses.

(20) [~~(21)~~] Safety certification label--A label placed on a motor vehicle by a manufacturer certifying that the motor vehicle complies with all federal motor vehicle safety standards.

(21) [~~(22)~~] Sand rail--A motor vehicle as defined by Transportation Code, §551A.001.

(22) [~~(23)~~] Statement of fact--A written declaration that supports an application for a title, that is executed by an involved party to a transaction involving a motor vehicle, and that clarifies an error made on a title or other negotiable evidence of ownership. An involved party is the seller, or an agent of the seller involved in the motor vehicle transaction. When a written declaration is necessary to correct an odometer disclosure error, the signatures of both the seller and buyer when the error occurred are required.

(23) [~~(24)~~] Title application--A form prescribed by the division director that reflects the information required by the department to create a motor vehicle title record.

(24) [~~(25)~~] Utility vehicle or UTV--A motor vehicle as defined by Transportation Code, §551A.001, and designed primarily for utility use. The term does not include a "golf cart" as defined by Trans-

portation Code, §551.401, or a self-propelled, motor-driven vehicle designed or marketed by the manufacturer primarily for non-utility uses.

(25) [~~(26)~~] Verifiable proof--Additional documentation required of a vehicle owner, lienholder, or agent executing an application for a certified copy of a title.

(A) - (C) (No change.)

§217.4 Initial Application for Title.

(a) (No change.)

(b) Place of application. Except as otherwise provided by Transportation Code, Chapters 501 and 502, and by §217.84(a) of this title (relating to Application for Nonrepairable or Salvage Vehicle Title), when motor vehicle ownership is transferred, a title application must be filed with:

(1) the county tax assessor-collector in the county in which the applicant resides or in the county in which the motor vehicle was purchased or encumbered [~~, as selected by the applicant~~]; or

(2) a [~~the~~] county tax assessor-collector of a county who is willing to accept the application [~~if the county tax assessor-collector's office of the county in which the owner resides is closed for more than one week or if the department is notified that the county tax assessor-collector's office may be closed for more than one week~~].

(c) Information to be included on application. An applicant for an initial title must file an application on a form prescribed by the department. The form will at a minimum require the:

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

(4) previous owner's legal name and municipality and state [~~complete mailing address~~], if available;

(5) - (8) (No change.)

(d) Accompanying documentation. The title application must be supported by, at a minimum, the following documents:

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

(4) a vehicle inspection report [~~an identification certificate~~] if required by Transportation Code, Chapter 548, and Transportation Code, §501.030, and if the vehicle is being titled and registered, or registered only;

(5) - (6) (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 November 1, 2021.

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Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 12, 2021
For further information, please call: (512) 465-5665

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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.23, 217.28, 217.36, 217.45, 217.46

STATUTORY AUTHORITY. The department proposes amendments to §§217.23, 217.28, 217.36, 217.45, and 217.46 under Transportation Code §§501.0041, 502.0021, 520.003, and 1002.001.

- Transportation Code §501,0041 authorizes the department to adopt rules to administer Transportation Code Chapter 501.

- Transportation Code §502.0021 authorizes the department to adopt rules to administer Transportation Code Chapter 502.

- Transportation Code §520.003 authorizes the department to adopt rules to administer Transportation Code Chapter 520,

- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§501.023, 501.0234, 501.030, 502.040, 502.041, 502.407, 520.006, 521.144, 707.020 and 707.021.

§217.23. Initial Application for Vehicle Registration.

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

(c) An initial application for registration must be filed with the tax assessor-collector of the county in which the owner resides or any county tax assessor-collector who is willing to accept the application, except as provided in subsection (d) of this section. [~~:~~]

(d) [~~(1)~~] An [~~an~~] application for registration, as a prerequisite to filing an application for title, may [~~also~~] be filed with the county tax assessor-collector in the county in which:

(1) the owner resides;

(2) the motor vehicle is purchased or encumbered; or

(3) a county tax assessor-collector who is willing to accept the application.

[~~(2) if a county has been declared a disaster area, the resident may apply at the closest unaffected county if the affected county tax assessor-collector estimates the county offices will be inoperable for a protracted period; or~~]

[~~(3) if the county tax assessor-collector office in the county in which the owner resides is closed for more than one week, the resident may apply to the county tax assessor-collector in a county that borders the closed county if the adjacent county agrees to accept the application.~~]

§217.28 .Vehicle Registration Renewal.

(a) To renew vehicle registration, a vehicle owner must apply [~~, prior to the expiration of the vehicle's registration,~~] to the tax assessor-collector of the county in which the owner resides or a county tax assessor-collector who is willing to accept the application.

(b) The department will send a registration [~~license plate~~] renewal notice, indicating the proper registration fee and the month and year the registration expires, to each vehicle owner prior to the expiration of the vehicle's registration.

(c) The registration [~~license plate~~] renewal notice should be returned by the vehicle owner to the [~~appropriate~~] county tax assessor-collector in the county in which the owner resides or a county tax assessor-collector who is willing to accept the application, or to that [~~the~~] tax assessor-collector's deputy, either in person or by mail, unless the vehicle owner renews via the Internet. The renewal notice must be accompanied by the following documents and fees:

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

(d) If a registration renewal notice is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents personal identification acceptable to the county tax assessor-collector or via the Internet. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Renewal of expired vehicle registrations.

(1) - (4) (No change.)

(5) Specialty license plates, symbols, tabs, or other devices may be prorated as provided in §217.45(d)(2) of this title (relating to Specialty License Plates, Symbols, Tabs, and Other Devices) [~~If a vehicle is registered in accordance with Transportation Code, §§502.255, 502.431, 502.435, 502.454, 504.315, 504.401, 504.405, 504.505, or 504.515 and if the vehicle's registration is renewed more than one month after expiration of the previous registration, the registration fee will be prorated~~].

(6) (No change.)

(f) For purposes of Transportation Code §502.407(c), the county tax assessor-collector's office of the county in which the owner resides is closed for a protracted period of time if the county tax assessor-collector's office has notified the department that it is closed or will be closed for more than one week.

§217.36. Refusal to Register by Local Government and Record Notation.

(a) (No change.)

[~~(b) Refusal to register due to traffic signal violation. A local authority, as defined in Transportation Code, §541.002, that operates a traffic signal enforcement program authorized under Transportation Code, Chapter 707 may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of a motor vehicle has failed to pay the civil penalty for a violation of the local authority's traffic signal enforcement system involving that motor vehicle. In accordance with Transportation Code, §707.017, a county tax assessor-collector may refuse to register a motor vehicle if such a failure is indicated in the motor vehicle record for that motor vehicle. The local authority is responsible for obtaining the agreement of the county in which the local authority is located to refuse to register motor vehicles for failure to pay civil penalties imposed by the local authority.~~]

(b) [~~(c)~~] Refusal to register vehicle in certain counties. A county may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of the vehicle has failed to pay a fine, fee, or tax that is past due. In accordance with Transportation Code[~~,~~] §502.010, a county tax assessor-collector may refuse to register a motor vehicle if such a failure is indicated in the motor vehicle record for that motor vehicle.

(c) [~~(d)~~] Record notation. A contract between the department and a county, municipality, or local authority entered into under Transportation Code[~~,~~] §502.010 or [~~,~~] Transportation Code[~~,~~] §702.003 [~~, or Transportation Code, §707.017~~] will contain the terms set out in this subsection.

(1) - (5) (No change.)

§217.45. Specialty License Plates, Symbols, Tabs, and Other Devices.

(a) (No change.)

(b) Initial application for specialty license plates, symbols, tabs, or other devices.

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

(3) Place of application. Applications for specialty license plates may be made directly to the county tax assessor-collector in which the owner resides or a county tax assessor-collector who is willing to accept the application, except that applications for the following license plates must be made directly to the department:

(A) County Judge;

(B) Federal Administrative Law Judge;

(C) State Judge;

(D) State Official;

(E) U.S. Congress--House;

(F) U.S. Congress--Senate; and

(G) U.S. Judge.

(4) (No change.)

(c) (No change.)

(d) Specialty license plate renewal.

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

(3) Renewal.

(A) Renewal notice. Approximately 60 days before the expiration date of a specialty license plate, symbol, tab, or other device, the department will send each owner a renewal notice that includes the amount of the specialty plate fee and the registration fee.

(B) Return of notice. The owner must return the fee and any prescribed documentation to the tax assessor-collector of the county in which the owner resides or a county tax assessor-collector who is willing to accept the application, except that the owner of a vehicle with one of the following license plates must return the documentation, and specialty license plate fee, if applicable, directly to the department and submit the registration fee to a [~~the~~] county tax assessor-collector:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

(iv) State Official;

(v) U.S. Congress--House;

(vi) U.S. Congress--Senate; and

(vii) U.S. Judge.

(C) - (D) (No change.)

(E) Lost or destroyed renewal notices. If a renewal notice is lost, destroyed, or not received by the vehicle owner, the specialty license plates, symbol, tab, or other device may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation to the tax assessor-collector of the county in which the owner resides or a county tax assessor-collector who is willing to accept the application. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of specialty license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. The owner of a vehicle with specialty license plates, symbols, tabs, or other devices may

transfer the specialty plates between vehicles by filing an application through the county tax assessor-collector in which the owner resides or a county tax assessor-collector who is willing to accept the application, if the vehicle to which the plates are transferred:

(i) is titled or leased in the owner's name; and

(ii) meets the vehicle classification requirements for that particular specialty license plate, symbol, tab, or other device.

(B) - (C) (No change.)

(2) - (3) (No change.)

(f) Replacement.

(1) Application. When specialty license plates, symbols, tabs, or other devices are lost, stolen, or mutilated, the owner shall apply directly to a [~~the~~] county tax assessor-collector for the issuance of replacements [~~, except that Log Loader license plates must be reapplied for and accompanied by the prescribed fees and documentation~~].

(2) - (3) (No change.)

(g) - (l) (No change.)

§217.46. Commercial Vehicle Registration.

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

(c) Application for commercial vehicle registration.

(1) Application form. An applicant shall apply for commercial license plates through the appropriate county tax assessor-collector upon forms prescribed by the director and shall require, at a minimum, the following information:

(A) owner name and complete address;

(B) complete description of vehicle, including empty weight; and

(C) vehicle identification number [~~motor number~~] or serial number.

(2) Empty weight determination.

(A) The weight of a Motor Bus shall be the empty weight plus carrying capacity, in accordance with Transportation Code, §502.055.

(B) The weight of a vehicle cannot be lowered below the weight indicated on a Manufacturer's Certificate of Origin unless a corrected Manufacturer's Certificate of Origin is obtained.

(C) In all cases where the department questions the empty weight of a particular vehicle, the applicant should present a weight certificate from a public weight scale or the Department of Public Safety.

(3) Gross weight.

(A) (No change.)

(B) Restrictions. The following restrictions apply to combined gross weights.

(i) (No change.)

(ii) A combination of vehicles is restricted to a total gross weight not to exceed 80,000 pounds; however, all combinations may not qualify for 80,000 pounds unless such weight can be properly distributed in accordance with axle load limitations, [~~tire size,~~] and distance between axles, in accordance with Transportation Code, §623.011.

(4) Vehicle identification number [~~Motor number~~] or serial number. Ownership must be established by a court order if no vehicle identification number [~~motor~~] or serial number can be identified. Once ownership has been established, the department will assign a number upon payment of the fee.

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

(d) Renewal of commercial license plates.

(1) (No change.)

(2) Registration [~~License Plate~~] Renewal Notice. The department will send [~~mail~~] a registration renewal notice [~~License Plate Renewal Notice~~], indicating the proper registration fee and the month and year the registration expires, to each vehicle owner approximately six to eight weeks prior to the expiration of the vehicle's registration.

(3) Return of registration renewal notices [~~License Plate Renewal Notices~~]. Except for authorized online renewals, registration renewal notices [~~License Plate Renewal Notices~~] should be returned by the vehicle owner to the department or the appropriate county tax assessor-collector, as indicated on the registration renewal notice [~~License Plate Renewal Notice~~]. Unless otherwise exempted by law, registration renewal notices [~~License Plate Renewal Notices~~] may be returned either in person or by mail, and shall be accompanied by:

(A) - (D) (No change.)

(4) Lost or destroyed registration renewal notice [~~License Plate Renewal Notice~~]. If a registration renewal notice [~~License Plate Renewal Notice~~] is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents personal identification acceptable to the county tax assessor-collector. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of commercial vehicle license plates.

(1) Transfer between persons. With the exceptions noted in paragraph (3) of this subsection, when ownership of a vehicle displaying commercial vehicle license plates is transferred, application for transfer of such license plates shall be made with the county tax assessor-collector in the county in which the purchaser resides or a county tax assessor-collector who is willing to accept the application. If the purchaser does not intend to use the vehicle in a manner that would qualify it for the license plates issued to that vehicle, such plates must be exchanged for the appropriate license plates.

(2) - (3) (No change.)

(f) Replacement of lost, stolen, or mutilated commercial vehicle license plates. An owner of lost, stolen, or mutilated commercial vehicle license plates may obtain replacement license plates by filing an Application for Replacement Plates and remitting the prescribed fee to the county tax assessor-collector or from the department [~~of the county in which the owner resides~~].

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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Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

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SUBCHAPTER D. NONREPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §217.89

STATUTORY AUTHORITY. The department proposes amendments to §217.89 under Transportation Code §§501.0041, 502.0021, 520.003, and 1002.001.

- Transportation Code §501.0041 authorizes the department to adopt rules to administer Transportation Code Chapter 501.

- Transportation Code §502.0021 authorizes the department to adopt rules to administer Transportation Code Chapter 502.

- Transportation Code §520.003 authorizes the department to adopt rules to administer Transportation Code Chapter 520.

- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§501.023, 501.0234, 501.030, 502.040, 502.041, 502.407, 520.006, 521.144, 707.020 and 707.021.

§217.89. Rebuilt Salvage Motor Vehicles.

(a) Filing for title. When a salvage motor vehicle or a non-repairable motor vehicle for which a non-repairable vehicle title was issued prior to September 1, 2003, has been rebuilt, the owner shall file a certificate of title application, as described in §217.4 of this title (relating to Initial Application for Title), for a rebuilt salvage certificate of title.

(b) Place of application. An application for a rebuilt salvage certificate of title shall be filed with the county tax assessor-collector in the county in which the applicant resides, [~~or~~] in the county in which the motor vehicle was purchased or is encumbered, or to any county tax assessor-collector who is willing to accept the application.

(c) Fee for rebuilt salvage certificate of title. In addition to the statutory fee for a title application and any other applicable fees, a $65 rebuilt salvage fee must accompany the application [~~, unless the applicant provides the evidence described in subsection (d)(3)(B) of this section~~].

(d) Accompanying documentation. The application for a certificate of title for a rebuilt non-repairable or salvage motor vehicle must be supported, at a minimum, by the following documents:

(1) evidence of ownership, properly assigned to the applicant, as described in subsection (e) of this section;

(2) a rebuilt statement, on a form prescribed by the department that includes:

(A) a description of the motor vehicle, which includes the motor vehicle's model year, make, model, identification number, and body style;

(B) an explanation of the repairs or alterations made to the motor vehicle;

(C) a description of each major component part used to repair the motor vehicle and showing the identification number required by federal law to be affixed to or inscribed on the part;

(D) the name [~~and address~~] of the owner and the name and address of the rebuilder;

(E) a statement by the owner that the owner is the legal and rightful owner of the vehicle, the vehicle is rebuilt, repaired, reconstructed, or assembled and that the vehicle identification number disclosed on the rebuilt affidavit is the same as the vehicle identification number affixed to the vehicle;

(F) the signature of the owner, or the owner's authorized agent; and

(G) a statement by the rebuilder that the vehicle has been rebuilt, repaired, or reconstructed by the rebuilder and that all component parts used were obtained in a legal and lawful manner, signed by the rebuilder or the rebuilder's authorized agent or employee;

(3) evidence of inspection submitted by the person who repairs, rebuilds, or reconstructs a non-repairable or salvage motor vehicle in the form of [~~:~~]

[~~(A)~~] disclosure on the rebuilt statement of the vehicle inspection report authorization or certificate [~~sticker~~] number, and the date of inspection [~~expiration~~], issued by an authorized state safety inspection station after the motor vehicle was rebuilt, if the motor vehicle will be registered at the time of application; [~~or~~]

[~~(B) a written statement, executed by a specially trained commissioned officer of the Department of Public Safety prior to September 1, 2003, certifying that the rebuilt non-repairable or salvage motor vehicle's parts and identification numbers have been inspected and that the vehicle complies with state safety standards;~~]

(4) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(5) proof of financial responsibility in the title applicant's name, as required by Transportation Code §502.046, [~~§502.153~~] unless otherwise exempted by law;

(6) a vehicle inspection report [~~the identification certificate~~] required by Transportation Code[~~,~~] §548.256[~~,~~] and Transportation Code[~~,~~] §501.030[~~,~~] if the motor vehicle was last titled and registered in another state or country, unless otherwise exempted by law; and

(7) a release of any liens, unless there is no transfer of ownership and the same lienholder is being recorded as is recorded on the surrendered evidence of ownership.

(e) - (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.

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General Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.56

The Texas Department of Motor Vehicles (department) proposes amendments to 43 TAC §217.56, concerning vehicle registration reciprocity agreements. The amendments are necessary to implement Transportation Code §502.091(b), which authorizes the department to require an applicant for vehicle registration under the International Registration Plan (IRP) to register under the Unified Carrier Registration System Plan and Agreement under 49 U.S.C. §14504a (UCR) before applying for vehicle registration under the IRP if the applicant is required to register under UCR. The amendments are also necessary to delete certain definitions because the relevant terms are defined in the IRP. The amendments are also necessary to incorporate by reference the current edition of the IRP dated January 1, 2021. All amendments are substantive, except for the deletion of the definitions.

EXPLANATION. Amendments to §217.56(c)(2)(B) are necessary to incorporate by reference the current edition of the IRP dated January 1, 2021. Texas is bound by the IRP, which is a vehicle registration reciprocity agreement between the 48 contiguous states, the District of Columbia, and the Canadian provinces. Section 217.56 must incorporate the latest edition of the IRP because it contains language regarding the nature and requirements of vehicle registration under the IRP. Texas is a member of the IRP, as authorized by Transportation Code §502.091 and 49 U.S.C. §31704, and must comply with the current version of the IRP. The jurisdictions that are members of the IRP amended the January 1, 2019 edition of the IRP as follows to create the January 1, 2021 edition of the IRP: amended Section 1325 regarding the composition of the Board of Directors of the Repository, and added a new Dispute Resolution Committee decision.

Amendments to §217.56(c)(2)(B) are also necessary to delete definitions because the relevant terms are defined in the IRP. It is not necessary to repeat any definitions from the IRP in §217.56(c)(2) because the IRP is adopted by reference in §217.56(c)(2)(B). Also, most of the defined terms in the definitions in §217.56(c)(2)(B) do not appear in §217.56(c)(2) other than in the definitions.

The amendment to §217.56(c)(2)(C)(i) is necessary to implement Transportation Code §502.091(b) by requiring an applicant for vehicle registration under the IRP to register under UCR before applying for IRP registration if the applicant is required to register under UCR. Texas participates in UCR, which is a federal registration program that is administered by the 41 states that participate in UCR (participating states) under 49 U.S.C. §14504a. Motor carriers and motor private carriers (motor carriers), as well as brokers, freight forwarders, and leasing companies (transportation service providers), that provide interstate transportation services must register under UCR and pay the fees under §14504a and 49 C.F.R. §367.20, *et seq.* Texas is authorized to participate in UCR under Transportation Code Chapter 645 and 43 TAC §218.17.

The department currently enforces UCR through audits and administrative enforcement actions. The amendment to §217.56(c)(2)(C)(i) requires an applicant for IRP to provide the department with a copy of the applicant's receipt under UCR to prove the applicant is currently registered under UCR if the applicant is required to register under UCR. The department believes the amendment to §217.56(c)(2)(C)(i) will help Texas comply with the 85% UCR compliance rate as required by the UCR State Performance Standards dated January 28, 2020. The department also believes the amendment will help Texas increase its UCR compliance rate. Texas achieved a UCR compliance rate of 88.37% for UCR registration year 2019, and 85.39% for UCR registration year 2020. Also, as more of the participating states increase their UCR compliance rate, it increases the chances that the Federal Motor Carrier Safety Administration (FMCSA) will reduce the UCR fees for all motor carriers and transportation service providers.

The UCR State Performance Standards require each participating state to achieve a minimum of an 85% UCR registration compliance rate by the end of each UCR registration period, which is the period during which registration fees are collected for each UCR registration year. The UCR registration compliance rate for a state is determined for each UCR registration period by dividing the total number of UCR registrations for that state by the total number of people, including sole proprietors and legal entities, that are required to have UCR registration in that state. According to the UCR State Performance Standards, states that do not demonstrate the ability to achieve the 85% registration compliance rate must submit a remedial action plan to the UCR Audit Subcommittee that identifies actions the state has taken or will take to help ensure future compliance with the 85% registration compliance rate. The UCR State Performance Standards also require participating states to undergo periodic compliance reviews which are administered with oversight from the UCR Audit Subcommittee and the UCR Board of Directors.

The current UCR Handbook says the participating states enforce the payment of UCR fees in a variety of ways. The UCR Handbook also says that some states deny a motor carrier its vehicle registration under the IRP until the motor carrier completes its UCR registration.

If the owner of a commercial vehicle registers its vehicle under the IRP, the vehicle is registered in the 48 contiguous states, as well as the District of Columbia and the Canadian provinces (member jurisdictions). If the owner of a commercial vehicle does not have IRP registration, the owner must generally obtain vehicle registration in each of the member jurisdictions in which the vehicle will travel. Many owners of commercial vehicles that travel through more than one of the member jurisdictions want to get IRP registration because it is an efficient and cost-effective way to obtain vehicle registration at a fraction of the cost. When the owner registers its vehicles with one base member jurisdiction under the IRP, the vehicles are only required to display one license plate that indicates the vehicles are registered in all member jurisdictions. Also, under the IRP, the owner pays vehicle registration fees based on the percentage of travel in each member jurisdiction relative to the total distance traveled in all member jurisdictions. IRP registration is also called apportioned registration because the owner is only required to pay a portion of the registration fees in any member jurisdiction.

FMCSA must set the UCR fees in an amount sufficient to collect enough revenue to pay the administrative costs for UCR and to pay the participating states the revenue they are entitled to receive under §14504a(g) and (h), based on the recommendation of the UCR Board under §14504a(d)(7)(A). The 41 participating states collect the UCR fees for each UCR registration year. The collected UCR fees are allocated to the states and to pay the administrative costs for UCR under §14504a(g) and (h).

FMCSA must increase the UCR fees if there is a shortage of UCR revenue and the UCR board requests an adjustment to the fees. *See* §14504a(d)(7) and (f)(1)(E). When FMCSA proposed to increase the UCR fees in 2010, some commenters stated that the UCR fees should only be raised after the participating states achieved adequate compliance with UCR. *See* Fees for the Unified Carrier Registration Plan and Agreement, 75 Fed.Reg. 21993, 22001 (April 27, 2010). Many commenters stated that raising the UCR fees as proposed was unfair because it increased the burden on compliant motor carriers to the benefit of the non-compliant motor carriers. *Id.* at 22002. One commenter stated that applicants for vehicle registration should be required to show proof of compliance with UCR before their vehicle could be registered. *Id.* FMCSA encouraged more states to register any person, including any entities, for UCR at the same time the states renew vehicle registration, including IRP registration. *Id.* at 21999.

FMCSA must reduce the UCR fees if there is a surplus of UCR revenue and the UCR board requests an adjustment to the fees. *See* §14504a(d)(7), (f)(1)(E), and (h)(4). A surplus of UCR revenue occurs when the participating states collect more UCR revenue than is needed to pay the administrative costs for UCR and to pay the participating states the revenue they are entitled to receive under §14504a(g) and (h). The participating states are not allowed to get more UCR revenue than they are entitled to keep under §14504a(g) and (h), even if there is a surplus of UCR revenue. As more of the participating states increase their UCR compliance rate, it increases the chances that FMCSA will reduce the UCR fees for all motor carriers and transportation service providers. The last time FMCSA reduced the UCR fees was in 2020. *See* Fees for the Unified Carrier Registration Plan and Agreement, 85 Fed. Reg. 8192 (Feb. 13, 2020) (codified at 49 C.F.R. §367.60).

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Even if Texas increases its UCR compliance rate by requiring an applicant to comply with UCR before the applicant applies for vehicle registration under IRP, doing so will not increase the amount of UCR revenue that Texas gets to keep under 49 U.S.C. §14504a(g) and (h). Jimmy Archer, Director of the Motor Carrier Division (MCD), has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Archer has also determined that, for each year of the first five years amended §217.56 is in effect, there are anticipated public benefits.

Anticipated Public Benefits. A public benefit anticipated as a result of the proposal is another mechanism for the department to enforce UCR, which will help Texas comply with the 85% UCR compliance rate as required by the UCR State Performance Standards. Also, as more of the participating states increase their UCR compliance rate, it increases the chances that FMCSA will reduce the UCR fees for all motor carriers and transportation service providers. Another public benefit anticipated as a result of the proposal is an updated rule that references the current version of the IRP.

Anticipated Costs to Comply with The Proposal. Mr. Archer anticipates that there will be no costs to comply with this rule. The cost for a person, including a sole proprietorship and any entity, to comply with UCR is required by federal statute and regulations. *See* 49 U.S.C. §14504a and 49 C.F.R. §367.20, *et seq.* The amendment to §217.56 merely adds another enforcement mechanism for the department to require a person to comply with the federal statute and regulations with which the person should already be complying.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the cost for a person to comply with UCR is required by federal statute and regulations. *See* 49 U.S.C. §14504a and 49 C.F.R. §367.20, et seq. The amendment to §217.56 merely adds another enforcement mechanism for the department regarding a person who is already required to comply with the federal law. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The department 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 Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments are in effect, no government program will be created or eliminated. Implementation of the proposed amendments will not require the creation of new employee positions or elimination of existing employee positions. Implementation will not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments will not create any new regulations. The proposed amendments will expand existing regulations to implement Transportation Code §502.091(b) by adding an enforcement mechanism to enforce existing law. The proposed amendments will not limit or repeal existing regulations. Lastly, the proposed amendments do not affect the number of individuals subject to the rule's applicability and will not affect the Texas economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on December 13, 2021. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments to §217.56 under Transportation Code §§502.091(b), 502.0021, and 1002.001.

- Transportation Code §502.091(b) authorizes the department to adopt rules to carry out the IRP and to require an applicant for IRP to register under UCR before the applicant applies for registration under IRP.

- Transportation Code §502.0021 authorizes the department to adopt rules to administer Transportation Code Chapter 502.

- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §502.091 and §645.001.

§217.56. Registration Reciprocity Agreements.

(a) Purpose. To promote and encourage the fullest possible use of the highway system and contribute to the economic development and growth of the State of Texas and its residents, the department is authorized by Transportation Code, §502.091 to enter into agreements with duly authorized officials of other jurisdictions, including any state of the United States, the District of Columbia, a foreign country, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country, and to provide for the registration of vehicles by Texas residents and nonresidents on an allocation or distance apportionment basis, and to grant exemptions from the payment of registration fees by nonresidents if the grants are reciprocal to Texas residents.

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

(1) Cab card--The apportioned vehicle registration receipt that contains, but is not limited to, the vehicle description and the registered weight at which the vehicle may operate in each jurisdiction.

(2) Department--The Texas Department of Motor Vehicles.

(3) Director--The director of the Motor Carrier Division, Texas Department of Motor Vehicles.

(4) Executive director--The chief executive officer of the department.

(5) Regional Service Center--A department office which provides specific services to the public, including replacement titles, bonded title rejection letters, and apportioned registration under the International Registration Plan (IRP).

(6) Temporary cab card--A temporary registration permit authorized by the department that allows the operation of a vehicle for 30 days subject to all rights and privileges afforded to a vehicle displaying apportioned registration.

(c) Multilateral agreements.

(1) Authority. The executive director may on behalf of the department enter into a multilateral agreement with the duly authorized officials of two or more other jurisdictions to carry out the purpose of this section.

(2) International Registration Plan.

(A) Applicability. The IRP is a registration reciprocity agreement among states of the United States and other jurisdictions providing for payment of registration fees on the basis of fleet distance operated in various jurisdictions. Its purpose is to promote and encourage the fullest possible use of the highway system by authorizing apportioned registration for commercial motor vehicles and payment of appropriate vehicle registration fees and thus contributing to the economic development and growth of the member jurisdictions.

(B) Adoption. The department adopts by reference the January 1, 2021 [~~January 1, 2018,~~] edition of the IRP. [~~Effective January 1, 2019, the department adopts by reference the amendments to the IRP with an effective date of January 1, 2019.~~] The department also adopts by reference the January 1, 2016, edition of the IRP Audit Procedures Manual. In the event of a conflict between this section and the IRP or the IRP Audit Procedures Manual, the IRP and the IRP Audit Procedures Manual control. Copies of the documents are available for review in the Motor Carrier Division, Texas Department of Motor Vehicles. Copies are also available on request. [~~The following words and terms, when used in the IRP or in paragraph (2) of this subsection, shall have the following meanings, unless the context clearly indicates otherwise.~~]

~~*[(i)* Apportionable vehicle--Any vehicle - except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, and government-owned vehicles - used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and used either for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property and:]~~

~~*[(I)* is a power unit having two axles and a gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds (11,793.401 kilograms);]~~

~~*[(II)* is a power unit having three or more axles, regardless of weight;]~~

~~*[(III)* is used in combination, when the weight of such combination exceeds 26,000 pounds (11,793.401 kilograms) gross vehicle weight; or]~~

~~*[(IV)* at the option of the registrant, a power unit, or the power unit in a combination of vehicles having a gross vehicle weight of 26,000 pounds (11,793.401 kilograms) or less.]~~

~~*[(ii)* Commercial vehicle--A vehicle or combination of vehicles designed and used for the transportation of persons or property in furtherance of any commercial enterprise, for hire or not for hire.]~~

~~*[(iii)* Erroneous issuance--Apportioned registration issued based on erroneous information provided to the department.]~~

~~*[(iv)* Established place of business--A physical structure owned or leased within the state of Texas by the applicant or fleet registrant and maintained in accordance with the provisions of the IRP.]~~

~~*[(v)* Fleet distance--All distance operated by an apportionable vehicle or vehicles used to calculate registration fees for the various jurisdictions.]~~

(C) Application.

(i) An applicant must submit an application to the department on a form prescribed by the director, along with additional documentation as required by the director. An applicant shall provide the department with a copy of the applicant's receipt under the Unified Carrier Registration System Plan and Agreement under 49 U.S.C. §14504a (UCR) to prove the applicant is currently registered under UCR if the applicant is required to register under UCR.

(ii) Upon approval of the application, the department will compute the appropriate registration fees and notify the registrant.

(D) Fees. Upon receipt of the applicable fees in the form as provided by §209.23 of this title (relating to Methods of Payment), the department will issue one or two license plates and a cab card for each vehicle registered.

(E) Display of License Plates and Cab Cards.

(i) The department will issue one license plate for a tractor, truck-tractor, trailer, and semitrailer. The license plate issued to a tractor or a truck-tractor shall be installed on the front of the tractor

or truck-tractor, and the license plate issued for a trailer or semitrailer shall be installed on the rear of the trailer or semitrailer.

(ii) The department will issue two license plates for all other vehicles that are eligible to receive license plates under the IRP. Once the department issues two license plates for a vehicle listed in this clause, one plate shall be installed on the front of the vehicle, and one plate shall be installed on the rear of the vehicle.

(iii) The cab card shall be carried at all times in the vehicle in accordance with the IRP. If the registrant chooses to display an electronic image of the cab card on a wireless communication device or other electronic device, such display does not constitute consent for a peace officer, or any other person, to access the contents of the device other than the electronic image of the cab card.

(iv) The authority to display an electronic image of the cab card on a wireless communication device or other electronic device does not prevent the Texas State Office of Administrative Hearings or a court of competent jurisdiction from requiring the registrant to provide a paper copy of the cab card in connection with a hearing, trial, or discovery proceeding.

(F) Audit. An audit of the registrant's vehicle operational records may be conducted by the department according to the IRP provisions and the IRP Audit Procedures Manual. Upon request, the registrant shall provide the operational records of each vehicle for audit in unit number order, in sequence by date, and including, but not limited to, a summary of distance traveled by each individual vehicle on a monthly, quarterly, and annual basis with distance totaled separately for each jurisdiction in which the vehicle traveled.

(G) Assessment. The department may assess additional registration fees of up to 100% of the apportionable fees paid by the registrant for the registration of its fleet in the registration year to which the records pertain, as authorized by the IRP, if an audit conducted under subparagraph (F) of this paragraph reveals that:

(i) the operational records indicate that the vehicle did not generate interstate distance in two or more member jurisdictions for the distance reporting period supporting the application being audited, plus the six-month period immediately following that distance reporting period;

(ii) the registrant failed to provide complete operational records; or

(iii) the distance must be adjusted, and the adjustment results in a shortage of registration fees due Texas or any other IRP jurisdiction.

(H) Refunds. If an audit conducted under subparagraph (F) of this paragraph reveals an overpayment of fees to Texas or any other IRP jurisdiction, the department will refund the overpayment of registration fees in accordance with Transportation Code, §502.195 and the IRP. Any registration fees refunded to a carrier for another jurisdiction will be deducted from registration fees collected and transmitted to that jurisdiction.

(I) Cancellation or revocation. The director or the director's designee may cancel or revoke a registrant's apportioned registration and all privileges provided by the IRP as authorized by the following:

(i) the IRP; or

(ii) Transportation Code, Chapter 502.

(J) Enforcement of cancelled or revoked registration.

(i) Notice. If a registrant is assessed additional registration fees, as provided in subparagraph (G) of this paragraph, and the additional fees are not paid by the due date provided in the notice or it is determined that a registrant's apportioned license plates and privileges should be canceled or revoked, as provided in subparagraph (I) of this paragraph, the director or the director's designee will mail a notice by certified mail to the last known address of the registrant. The notice will state the facts underlying the assessment, cancellation, or revocation; the effective date of the assessment, cancellation, or revocation; and the right of the registrant to request a conference as provided in clause (ii) of this subparagraph.

(ii) Conference. A registrant may request a conference upon receipt of a notice issued as provided by clause (i) of this subparagraph. The request must be made in writing to the director or the director's designee within 30 days of the date of the notice. If timely requested, the conference will be scheduled and conducted by the director or the director's designee at division headquarters in Austin and will serve to abate the assessment, cancellation, or revocation unless and until that assessment, cancellation, or revocation is affirmed or disaffirmed by the director or the director's designee. In the event matters are resolved in the registrant's favor, the director or the director's designee will mail the registrant a notice of withdrawal, notifying the registrant that the assessment, cancellation, or revocation is withdrawn, and stating the basis for that action. In the event matters are not resolved in the registrant's favor, the director or the director's designee will issue a ruling reaffirming the department's assessment of additional registration fees or cancellation or revocation of apportioned license plates and privileges. The registrant has the right to appeal in accordance with clause (iii) of this subparagraph.

(iii) Appeal. If a conference held in accordance with clause (ii) of this subparagraph fails to resolve matters in the registrant's favor, the registrant may request an administrative hearing. The request must be in writing and must be received by the director no later than the 20th day following the date of the ruling issued under clause (ii) of this subparagraph. If requested within the designated period, the hearing will be initiated by the department and will be conducted in accordance with Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). Assessment, cancellation, or revocation is abated unless and until affirmed or disaffirmed by order of the Board of the Texas Department of Motor Vehicles or its designee.

(K) Reinstatement.

(i) The director or the director's designee will reinstate apportioned registration to a previously canceled or revoked registrant if all applicable fees and assessments due on the previously canceled or revoked apportioned account have been paid and the applicant provides proof of an acceptable recordkeeping system for a period of no less than 60 days.

(ii) The application for the following registration year will be processed in accordance with the provisions of the IRP.

(L) Denial of apportioned registration for safety reasons. The department will comply with the requirements of the Performance and Registration Information Systems Management program (PRISM) administered by the Federal Motor Carrier Safety Administration (FMCSA).

(i) Denial or suspension of apportioned registration. Upon notification from the FMCSA that a carrier has been placed out of service for safety violations, the department will:

(I) deny initial issuance of apportioned registration;

(II) deny authorization for a temporary cab card, as provided for in subparagraph (M) of this paragraph;

(III) deny renewal of apportioned registration; or

(IV) suspend current apportioned registration.

(ii) Issuance after denial of registration or reinstatement of suspended registration. The director or the director's designee will reinstate or accept an initial or renewal application for apportioned registration from a registrant who was suspended or denied registration under clause (i) of this subparagraph upon presentation of a Certificate of Compliance from FMCSA, in addition to all other required documentation and payment of fees.

(M) Temporary cab card.

(i) Application. The department may authorize issuance of a temporary cab card to a motor carrier with an established Texas apportioned account for a vehicle upon proper submission of all required documentation, a completed application, and all fees for either:

(I) Texas title as prescribed by Transportation Code, Chapter 501 and Subchapter A of this chapter (relating to Motor Vehicle Titles); or

(II) registration receipt to evidence title for registration purposes only (Registration Purposes Only) as provided for in Transportation Code, §501.029 and §217.24 of this title (relating to Vehicle Last Registered in Another Jurisdiction).

(ii) Title application. A registrant who is applying for a Texas title as provided for in clause (i)(I) of this subparagraph and is requesting authorization for a temporary cab card, must submit to a Regional Service Center a photocopy of the title application receipt issued by the county tax assessor-collector's office.

(iii) Registration Purposes Only. A registrant who is applying for Registration Purposes Only under clause (i)(II) of this subparagraph and is requesting authorization for a temporary cab card, must submit an application and all additional original documents or copies of original documents required by the director to a Regional Service Center.

(iv) Department approval. On department approval of the submitted documents, the department will send notice to the registrant to finalize the transaction and make payment of applicable registration fees.

(v) Finalization and payment of fees. To finalize the transaction and print the temporary cab card, the registrant may compute the registration fees through the department's apportioned registration software application, TxIRP system, and:

(I) make payment of the applicable registration fees to the department as provided by §209.23 of this title; and

(II) afterwards, mail or deliver payment of the title application fee in the form of a check, certified cashier's check, or money order payable to the county tax assessor-collector in the registrant's county of residency and originals of all copied documents previously submitted.

(vi) Deadline. The original documents and payment must be received by the Regional Service Center within 72-hours after the time that the office notified the registrant of the approval to print a temporary cab card as provided in clause (iv) of this subparagraph.

(vii) Failure to meet deadline. If the registrant fails to submit the original documents and required payment within the time prescribed by clause (vi) of this subparagraph, the registrant's privilege to use this expedited process to obtain a temporary cab card will be denied by the department for a period of six months from the date of approval to print the temporary cab card.

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 November 1, 2021.

TRD-202104376
Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 12, 2021
For further information, please call: (512) 465-5665

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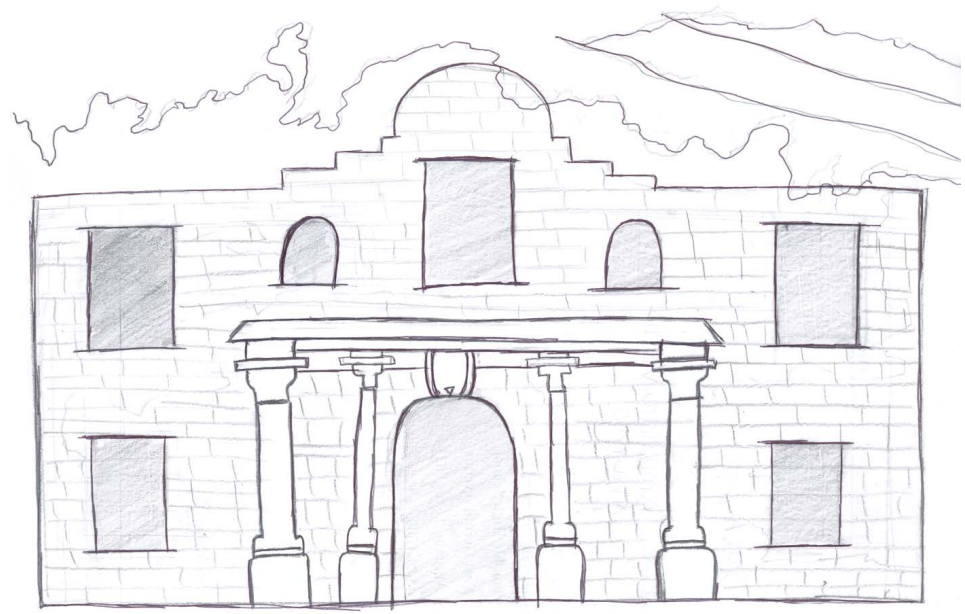

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). 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 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 202. INFORMATION SECURITY STANDARDS

The Texas Department of Information Resources (department) adopts amendments to 1 Texas Administrative Code Chapter 202, concerning Information Security Standards. 1 Texas Administrative Code §§202.1 - 202.4, 202.20 - 202.22, 202.24, 202.25, 202.27, 202.70 - 202.72, 202.74, and 202.75 are adopted without changes to the proposal as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5664). In addition, the department adopts new §202.77, which is adopted with changes to the proposal as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5664). This rule will be republished.

The amendments to 1 Texas Administrative Code §202.23 and §202.73, are adopted with nonsubstantive changes to the proposal as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5664) in response to comments received from the public. These rules will be republished.

DIR is not adopting amendments proposed to 1 Texas Administrative Code §202.26 and §202.76 as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5664) at this time.

The adopted amendments are the result of the department's statutory quadrennial rule review of 1 Texas Administrative Code Chapter 202 in addition to expanded rulemaking authority granted by the 87th Legislature. The department's formal notice of rule review was published in the May 17, 2019, issue of the *Texas Register* (44 TexReg 2473). The proposed rules were published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5664).

The adopted rules apply to both state agencies and institutions of higher education.

Comments Received by the Department in Response to the Proposed Rule

The department received comments in response to the proposed amendments as discussed below.

The department received comments on the rules proposed establishing the Texas Risk and Management Authorization Program (TX-RAMP) and the definitions pertinent to TX-RAMP.

A customer state agency recommended that the department remove the proposed phrase and definition "nonconfidential data" as found at 1 Texas Administrative Code §202.1(31), remove all references to "nonconfidential data" found in the proposed 1 Texas Administrative Code §202.27, and replace such references with data classification categories provided in a department-promulgated data classification guidelines document. The department declined to make this change as nonconfidential data and confidential data, as referenced by 1 Texas Administrative Code §202.27, are not meant to establish specifics of a statewide data classification scheme. Further, the term confidential data could include multiple data classification categories created by a state agency.

A customer state agency recommended that DIR remove the proposed phrase and definition "State-Controlled Data" as found at proposed 1 Texas Administrative Code §202.1(43) and referenced by 1 Texas Administrative Code §202.27 and replace it and any references to it with "Agency Data," with the proposed definition provided by the customer state agency for that term. The department declined to make this change as the Texas Risk and Authorization Management Program establishes a standardized approach for the security of cloud computing services that process the data controlled by a state agency. The purpose of this processing or the ownership of the state agency data is not applicable to this program.

A vendor identified that there might be fiscal impacts to state agencies as a result of TX-RAMP and requested clarity into the applicability of TX-RAMP to local governments and upon the use of next generation technology. The department declines to make a change to the proposed rule as a result of this comment as these requirements and applicability of statutory requirements are established by Texas Government Code § 2054.0593.

A vendor inquired as to the interoperability of other State's RAMP and FedRAMP certifications and as to whether the department published any rules for vendors to become certified as TX-RAMP compliant. The department declines to make a change to the proposed rule as specifics regarding the processes of vendor certification are established in the Program Manual created by 1 Texas Administrative Code §202.27(f).

DIR also received comments from customer state agencies regarding proposed amendments that did not pertain to TX-RAMP.

A customer state agency recommended the removal of the proposed security reporting requirement found at 1 Texas Administrative Code §202.23(b)(A)(iv), requiring a state agency to report security incidents assessed to "be an event that compromises, destroys, or alters information systems or applications in any way." The customer state agency identified that this language may have unintended consequences that require state agencies to report every security event, regardless of if such event rises to the level of a security incident. The department considered this comment and proposes the following nonsubstantive amendment to the proposed language to clarify the initial intent: "be an unauthorized incident that compromises, destroys, or al-

ters information systems, applications, or access to such systems or applications in any way."

A customer state agency inquired as to whether information security officers must meet with vendors to evaluate their compliance or document risk mitigation plans prior to contract award and questions its ability to document risk mitigation plans prior to contract award. The department declines to make a change to the proposed rule as 1 Texas Administrative Code §202.21(b)(9) does not mandate a state agency evaluate vendor compliance with a risk mitigation plan prior to acquisition of information nor does it require a state agency to fully document its risk mitigation plan.

Department Description of Adopted Changes.

The department adopts amendments correcting existing references to the Texas Government Code, Texas Penal Code, and Texas Business and Commerce Code to be in compliance with legal citation standards in §§202.1 - 202.4, 202.20 - 202.25, and 202.70 - 202.75.

In §202.1, the department adopts amendments adding the following definitions because of new or revised content in Chapter 202: "Application"; "Cloud Computing Service"; "FedRAMP"; "Nonconfidential Data"; "Program Manual"; "Residual Risk"; "Security Assessment"; "State-controlled data"; "StateRAMP"; "Statewide Technology Centers"; and "TX-RAMP."

The department adopts amendments to the definitions of "Control," "Destruction," "Information," "Information Owner," "Information System," "Security Incident," and "Threat" found in §202.1 to reflect current widely accepted industry definitions.

The department adopts amendments to the definition of "Institution of Higher Education" found in §202.2 to reflect current statutory requirements of Texas Government Code § 2054.0075, stating that public junior colleges shall follow information security standards established by the department.

The department further adopts amendments to the definition of "state agency" found in §202.3 for clarity.

In §202.4, the department adopts amendments clarifying the responsibilities of the State's Chief Information Security Officer (Chief Information Security Officer) to extract currently-existing Chief Information Security Officer duties for which individual state agency and institution of higher education staff are already responsible under 1 Texas Administrative Code Chapter 202; extend authority of this role over the coordination of certain policies, standards, and guidelines of entities operating or exercising control over State-controlled data; and task the Chief Information Security Officer with providing strategic direction to the Statewide Technology Centers in addition to other currently existing duties of this role.

In §202.20, for state agencies, and §202.70, for institutions of higher education, the department adopts amendments tasking state agency and institution of higher education heads with ultimate responsibility for information security while permitting the agency or institution of higher education head to delegate specific operational responsibilities to a designated representative, if they so choose.

In §202.21, for state agencies, and §202.71, for institutions of higher education, the department adopts amendments incorporating by reference Texas Government Code § 2054.136, addressing requirements for and responsibilities of a designated Information Security Officer and removing the list of Information Security Officer responsibilities that are enumerated at this statutory reference. Further, the department adopts amendments clarifying the role of the Information Security Officer in risk and security assessments and expanding their participation in the development of organizational policies necessary to protect the security of information and information resources against unauthorized access or exposure. In addition, the department adopts amendments removing language that only requires security verification and risk mitigation prior to the purchase of new high impact computer applications and replacing this language to require the implementation of security verification and development of risk mitigation plans prior to acquisitions of new information systems or the deployment of internally developed information systems.

In §202.22, for state agencies, and §202.72, for institutions of higher education, the department adopts amendments clarifying staff responsibilities for Information Security Owners and Information Custodians.

In §202.23, for state agencies, and §202.73, for institutions of higher education, the department adopts amendments to the annual reporting requirement that require an Information Security Officer to provide an annual security report directly to the agency head. The department further expands incident reporting requirements to the department. The department further removes criticality analysis in reporting requirements and amends the language to consider the nature of the incident when determining how to report.

In §202.24, for state agencies, and §202.74, for institutions of higher education, the department adopts amendments to agency information security program requirements to include periodic assessments in alignment with minimum legal reporting requirements and expanding such assessments to include applications. The department further adopts the expansion of program requirements to include a plan for providing information security for applications. The department further adopts amendments to include specific Texas Government Code citations regarding required security awareness education programs.

In §202.25, for state agencies, and §202.75, for institutions of higher education, the department adopts amendments to the requirements of risk assessments to include the ranking of risks and impacts and remove language regarding inherent risks. The department further clarifies the timeline by which risk assessments shall be conducted. The department adopts the expansion of agency head responsibilities to include the approval of security risk acceptance, transference, or mitigation decisions for all high residual risk systems.

DIR also adopts two new subsections, §202.27, for state agencies, and §202.77, for institutions of higher education, concerning the Texas Risk and Authorization Management Program (TX-RAMP). In these two new subsections, the department addresses the requirements of Senate Bill 475 (87th Session (Regular)) and establishes a Program Manual document published by the department that provides minimum baseline standards for cloud computing security products, and establishes the responsibilities of cloud computing service vendors, governmental entities that will be using such products, and the department in administering the TX-RAMP. It also provides for certain other Risk and Authorization Management Program certifications to satisfy the TX-RAMP requirements as permitted by statute.

SUBCHAPTER A. DEFINITIONS

1 TAC §§202.1 - 202.4

The amendments are adopted pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code § 2059.053, which authorizes the department to adopt rules related to network security; and Senate Bill 475 (87(R)), which orders the department to adopt rules necessary to implement and administer the Texas Risk and Management Authorization Program.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2021.

TRD-202104338
Katherine Rozier Fite
General Counsel
Department of Information Resources
Effective date: November 17, 2021
Proposal publication date: September 10, 2021
For further information, please call: (512) 475-4552

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SUBCHAPTER B. INFORMATION SECURITY STANDARDS FOR STATE AGENCIES

1 TAC §§202.20 - 202.25, 202.27

The amendments are adopted pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code § 2059.053, which authorizes the department to adopt rules related to network security; and Senate Bill 475 (87(R)), which orders the department to adopt rules necessary to implement and administer the Texas Risk and Management Authorization Program.

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

§202.23. Security Reporting.

(a) Agency Reporting. Each Information Security Officer shall directly report to the agency head, at least annually, on the adequacy and effectiveness of information security policies, procedures, practices, compliance with the requirements of this chapter, and:

(1) effectiveness of current information security program and status of key initiatives;

(2) residual risks identified by the state agency risk management process; and

(3) state agency information security requirements and requests.

(b) Report to the Department.

(1) Urgent Incident Report.

(A) Each state agency shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Security incidents shall be promptly reported to immediate supervisors and the agency Information Security Officer. Confirmed or suspected security incidents shall be reported to the department within 48 hours of discovery in the form and manner specified by the department where the security incident is assessed to:

(i) propagate to other state systems;

(ii) result in criminal violations that shall be reported to law enforcement in accordance with state or federal information security or privacy laws;

(iii) involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as defined in Texas Business and Commerce Code § 521.002(a)(2) and other applicable laws that may require public notification; or

(iv) be an unauthorized incident that compromises, destroys, or alters information systems, applications, or access to such systems or applications in any way.

(B) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Texas Penal Code Chapter 33 or Texas Penal Code Chapter 33A, the state agency shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.

(C) Depending on the nature of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams shall continue to report information to the department as it is collected. The department shall instruct state agencies as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an agency shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency. Agencies shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.

(2) Monthly Incident Report. Summary reports of security-related events shall be sent to the department on a monthly basis no later than nine (9) calendar days after the end of the month. State agencies shall submit summary security incident reports in the form and manner specified by the department. Supporting vendors or other third parties that report security incident information to a state agency shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency.

(3) Biennial Information Security Plan. Each state agency shall submit to the department a Biennial Information Security Plan in accordance with Texas Government Code § 2054.133.

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 October 28, 2021.

TRD-202104339

Katherine Rozier Fite
General Counsel
Department of Information Resources
Effective date: November 17, 2021
Proposal publication date: September 10, 2021
For further information, please call: (512) 475-4552

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SUBCHAPTER C. INFORMATION SECURITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §§202.70 - 202.75, 202.77

The amendments are adopted pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code § 2059.053, which authorizes the department to adopt rules related to network security; and Senate Bill 475 (87(R)), which orders the department to adopt rules necessary to implement and administer the Texas Risk and Management Authorization Program.

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

§202.73. Security Reporting.

(a) Institution Reporting. Each Information Security Officer shall directly report to the agency head, at least annually, on the adequacy and effectiveness of information security policies, procedures, practices, compliance with the requirements of this chapter, and:

(1) effectiveness of current information security program and status of key initiatives;

(2) residual risks identified by the institution of higher education risk management process; and

(3) institution of higher education information security requirements and requests.

(b) Report to the Department.

(1) Urgent Incident Report.

(A) Each state institution of higher education shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Confirmed or suspected incidents shall be reported to immediate supervisors and the institution of higher education Information Security Officer. Confirmed or suspected security incidents shall be reported to the department within 48 hours of discovery in the form and manner specified by the department where the security incident is assessed to:

(i) propagate to other state systems;

(ii) result in criminal violations that shall be reported to law enforcement in accordance with state or federal information security or privacy laws;

(iii) involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as defined in Texas Business and Commerce Code §521.002(a)(2) and other applicable laws that may require public notification; or

(iv) be an unauthorized incident that compromises, destroys, or alters information systems, applications, or access to such systems or applications in any way.

(B) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Texas Penal Code Chapters 33 or 33A, the institution of higher education shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.

(C) Depending on the nature of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams shall continue to report information to the department as it is collected. The department shall instruct state institutions of higher education as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by the department, unless otherwise directed by the institution of higher education. Institutions of higher education shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.

(2) Monthly Incident Report. Summary reports of security-related events shall be sent to the department on a monthly basis no later than nine (9) calendar days after the end of the month. Institutions of higher education shall submit summary security incident reports in the form and manner specified by the department. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by the department, unless otherwise directed by the institution of higher education.

(3) Biennial Information Security Plan. Each state institution of higher education shall submit to the department a biennial Information Security plan, in accordance with Texas Government Code § 2054.133.

§202.77. Texas Risk and Authorization Management Program for Institutions of Higher Education.

(a) Mandatory Standards. Mandatory standards for Texas cloud computing services identified by subsection (b)(1) of this section shall be defined by the department in the program manual published on the department's website. Revisions to such document will be executed in compliance with subsection (d) of this section.

(b) Cloud Computing Standards Subject to the Texas Risk and Authorization Management Program. The standards required by subsection (a) of this section shall include the below stated baseline standards for:

(1) TX-RAMP Public Controls Baseline (TX-RAMP Level 1) - This baseline is required for cloud computing services that:

(A) store, process, or transmit nonconfidential data of an institution of higher education; or

(B) host low impact information resources.

(2) TX-RAMP Confidential Controls Baseline (TX-RAMP Level 2) - This baseline is required for cloud computing services that:

(A) store, process, or transmit confidential data of an institution of higher education; and

(B) host moderate impact information resources or high impact information resources.

(c) Responsibilities of Cloud Computing Service Vendors.

(1) To be certified under the TX-RAMP program, a cloud computing service vendor shall:

(A) Provide evidence of compliance for information they are storing, processing, or transmitting as detailed by the program manual; and

(B) Demonstrate continuous compliance in accordance with the program manual.

(2) Primary contracting vendors, including resellers, who provide or sell cloud computing services to institutions of higher education shall present evidence of certification of the cloud computing service being sold in accordance with the program manual. Such certification is required for all cloud computing services being provided through the contract or in furtherance of the contract, including services provided through subcontractors or third-party providers.

(3) Subcontractors or third-party providers responsible solely for servicing or supporting a cloud computing service provided by another vendor shall not be required to provide evidence of certification.

(d) Responsibilities of the Department in Developing Updates to the Program Manual. Prior to publishing new or revised program standards as required by subsections (a) - (d) of this section, the department shall:

(1) solicit comment through the department's electronic communications channels for proposed standards from the Information Resources Managers, ITCHE, and Information Security Officers of agencies and institutions of higher education at least 30 days prior to publication of proposed program manual; and

(2) after reviewing comments provided during the comment period described by paragraph (1) of this subsection, present the proposed program manual to the department's Board and obtain approval from the Board for publication.

(e) Responsibilities of an Institution of Higher Education Contracting for Cloud Computing Services. An institution of higher education contracting for cloud computing services that store, process, or transmit data of the institution of higher education shall:

(1) confirm that vendors contracting with the institution of higher education to provide cloud computing services for the institution of higher education are certified through TX-RAMP prior to entering or renewing a cloud computing services contract on or after January 1, 2022; and

(2) require a vendor contracting with the institution of higher education to provide cloud computing services for the institution of higher education that are subject to the state risk and authorization management program to maintain program compliance and certification throughout the term of the contract.

(f) Acceptance of Other RAMP Certifications.

(1) FedRAMP and StateRAMP certifications shall be accepted in satisfaction of the above baselines once demonstrated by the vendor.

(2) At the department's discretion, another state's risk and authorization management program certification may be accepted in satisfaction of the above baselines once certification is demonstrated by the vendor in alignment with program manual requirements.

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 October 28, 2021.

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Katherine Rozier Fite
General Counsel
Department of Information Resources
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Proposal publication date: September 10, 2021
For further information, please call: (512) 475-4552

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 101. GENERAL ADMINISTRATION

7 TAC §101.7

The Texas State Securities Board adopts new rule §101.7, concerning References to the Texas Securities Act in Board Rules, without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6009). The new rule will not be republished.

The new rule provides interim guidance to the industry and public until the Board rules are updated during the next rule review cycle beginning in September 2022. Specifically, subsection (a) of new §101.7 provides a short history of the upcoming transition of the current Texas Securities Act from the Civil Statutes (e.g., the non-codified version) to the codified version of the Act to be located in the Government Code (which will become effective January 1, 2022) and refers readers to a disposition table posted on the Agency's website. Subsection (b) clarifies that a Board rule that references or cites the non-codified version of the Act is also a reference or cite to the equivalent provision in the codified Act. Subsection (c) clarifies that when a Board rule is amended in the future to refer to the codified Act, the requirements, obligations, or duties that existed in such rule will be preserved and continue to apply. The new rule also clarifies that existing provisions under the Board rules will continue to apply to activities occurring prior to a later update of the rules.

The rule assists the public and industry when reading the board rules to understand the effect of the non-substantive codification and directs them to a resource to locate the correct codified sections of the Act which correspond to the former, non-codified sections of the Act appearing in the rules.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted new rule affects: none applicable.

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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Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: November 21, 2021
Proposal publication date: September 17, 2021
For further information, please call: (512) 305-8303

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7 TAC §101.8

The Texas State Securities Board adopts new rule §101.8, concerning Employee Leave Pools, without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6010). The new rule will not be republished.

The new rule prescribes procedures relating to the operation of the Agency's family leave pool and sick leave pool, as required by Government Code, Chapter 661, and the Government Code, Section 661.002. The new rule sets forth the purpose of each leave pool, designates the Securities Commissioner as the administrator of the leave pools, and requires the Commissioner to develop and implement operating procedures consistent with the requirements of the new rule and relevant laws governing operation of the pools.

The Agency is in compliance with the directives of the legislature.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the authority of Government Code, §661.002 and §661.022. Section 661.002 requires that the governing body of each state agency adopt rules and prescribe procedures relating to the operation of an agency's sick leave pool. Section 661.022 requires the governing bodies of state agencies to adopt rules to create and administer an employee family leave pool.

The adopted new rule affects Government Code, Chapter 661.

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 November 1, 2021.

TRD-202104385
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: November 21, 2021
Proposal publication date: September 17, 2021
For further information, please call: (512) 305-8303

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CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.18

The Texas State Securities Board adopts an amendment to §115.18, concerning Special Provisions Relating to Military Applicants, without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6011). The amended rule will not be republished.

The amendment implements the requirements of House Bill 139, passed by the 87th Legislature, Regular Session(2021), which amended the definition of "Armed Forces of the United States" in §55.001 of the Texas Occupations Code to add the Space Force as the newest branch of the Armed Forces and amended §55.004 of the Texas Occupations Code to allow military spouse applicants to establish Texas residency for occupational licensing purposes by providing copies of the military service member's change of station orders. The amendment aligns the requirements and procedures for military applicants to become registered as securities professionals with the updated sections of the Occupations Code.

The regulatory burdens of certain military service members and spouses, licensed in good standing as securities professionals in another state, who are relocating to Texas, are eased or reduced, and the amendment makes the rule consistent with Chapter 55 of the Occupations Code and the current structure of the Armed Forces of the United States.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1 and §55.0041 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 55.0041 of the Texas Occupations Code requires a state agency that issues a license to adopt rules to implement §55.0041 and authorizes a state agency to adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under subsection (b)(3) of §55.0041.

The adopted amendment affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, 581-18, and 581-35.

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 November 1, 2021.

TRD-202104388
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: November 21, 2021
Proposal publication date: September 17, 2021
For further information, please call: (512) 305-8303

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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.18

The Texas State Securities Board adopts an amendment to §116.18, concerning Special Provisions Relating to Military Applicants, without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6012). The amended rule will not be republished.

The amendment implements the requirements of House Bill 139, passed by the 87th Legislature, Regular Session(2021), which amended the definition of "Armed Forces of the United States" in §55.001 of the Texas Occupations Code to add the Space Force as the newest branch of the Armed Forces and amended §55.004 of the Texas Occupations Code to allow military spouse applicants to establish Texas residency for occupational licensing purposes by providing copies of the military service member's change of station orders. The amendment aligns the requirements and procedures for military applicants to become registered as securities professionals with the updated sections of the Occupations Code.

The regulatory burdens of certain military service members and spouses, licensed in good standing as securities professionals in another state, who are relocating to Texas, are eased or reduced, and the amendment makes the rule consistent with Chapter 55 of the Occupations Code and the current structure of the Armed Forces of the United States.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1 and §55.0041 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 55.0041 of the Texas Occupations Code requires a state agency that issues a license to adopt rules to implement §55.0041 and authorizes a state agency to adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under subsection (b)(3) of §55.0041.

The adopted amendment affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, 581-18, and 581-35.

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 November 1, 2021.

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Travis J. Iles
Securities Commissioner
State Securities Board
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Proposal publication date: September 17, 2021
For further information, please call: (512) 305-8303

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 73. ELECTRICIANS

16 TAC §73.100

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 73, §73.100, regarding the Electricians Program, without changes to the proposed text as published in the July 23, 2021, issue of the *Texas Register* (46 TexReg 4424). This rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

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

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

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

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, adopted this rule on an emergency basis at its May 18, 2021, meeting. The rule became effective on May 20, 2021, was extended for an additional 60 days by the Commission at its August 10, 2021 meeting, and will expire on November 16, 2021. The text of the emergency rule is identical to that of the proposed rule.

The proposed rule was presented to and discussed by the Electrical Safety and Licensing Advisory Board at its meeting on July 2, 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 adopted rule amends §73.100 by placing the existing rule text into new subsection (a) and adding new subsection (b) to state that compliance with Section 210.8(F) of the 2020 NEC is not required until January 1, 2023. It is widely expected that manufacturers of both electrical and air conditioning equipment

will have resolved the compatibility issues by this date, at which point the danger to Texas residents will subside.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the July 23, 2021, issue of the *Texas Register* (46 TexReg 4424). The deadline for public comments was August 23, 2021. The Department received comments from two interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: One commenter stated that the proposed rules should not be adopted, suggesting that delaying the effective date of Section 210.8(F) of the 2020 NEC would discourage manufacturers from developing compatible equipment.

Department response: The Department disagrees with the comment. Department staff have reported that equipment manufacturers are actively developing equipment to address GFCI compatibility issues posed by Section 210.8(F). No changes to the proposed rules were made in response to this comment.

Comment: One commenter noted that the rules were necessary to protect Texans from the threats posed by extreme heat and cold.

Department response: The Department appreciates the comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Electrical Safety and Licensing Advisory Board met on September 8, 2021, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register.* At its meeting on October 5, 2021, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 1305, which authorize the Commission, 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 adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the adopted rule.

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 October 28, 2021.

TRD-202104336
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: November 17, 2021
Proposal publication date: July 23, 2021
For further information, please call: (512) 475-4879

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CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

16 TAC §75.100

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 75, §75.100, regarding the Air Conditioning and Refrigeration Contractors Program, without changes to the proposed text as published in the July 23, 2021, issue of the *Texas Register* (46 TexReg 4426). This rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

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

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

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

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, adopted this rule on an emergency basis at its May 18, 2021, meeting. The rule became effective on May 20, 2021, and will expire November 16, 2021. The text of the emergency rule is identical to that of the proposed rule.

The proposed rule was presented to and discussed by the Air Conditioning and Refrigeration Contractors Advisory Board at its meeting on June 30, 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 adopted rule amends §75.100 by adding new subsection (a)(5) to state that compliance with Section 210.8(F) of the 2020 NEC is not required until January 1, 2023. It is widely expected that manufacturers of both electrical and air conditioning equipment will have resolved the compatibility issues by this date, at which point the danger to Texas residents will subside.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the July 23, 2021, issue of the *Texas Register* (46 TexReg 4426). The deadline for public comments was August 23, 2021. The Department received comments from three

interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: One commenter stated that it would be best to delay implementation of Section 210.8(F) until equipment manufacturers find a solution to the issue of GFCI compatibility.

Department Response: The Department appreciates the comment.

Comment: One commenter stated that the industry has been aware of the GFCI compatibility issues for some time, and that he did not know what the solution should be.

Department Response: The Department appreciates the comment.

Comment: One commenter noted that the rule was necessary to protect Texans from the threats posed by extreme heat and cold.

Department Response: The Department appreciates the comment.

No changes were made to the proposed rules as a result of these comments.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The proposed rule was presented to and discussed by the Air Conditioning and Refrigeration Contractors Advisory Board at its meeting on June 30, 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. At its meeting on September 7, 2021, due to quorum issues the Advisory Board was unable to make a formal decision to recommend adoption of the proposed rule. However, none of the members expressed an objection to the adoption of the rule as published.

The Commission adopted this rule on an emergency basis at its May 18, 2021, meeting. The rule became effective on May 20, 2021, was extended for an additional 60 days by the Commission at its August 10, 2021 meeting, and will expire on November 16, 2021. The text of the emergency rule is identical to that of the proposed rule.

At its meeting on October 5, 2021, the Commission voted to adopt the proposed rule as published.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 1302, which authorize the Commission, 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 adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the adopted rule.

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 October 28, 2021.

TRD-202104335

Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: November 17, 2021
Proposal publication date: July 23, 2021
For further information, please call: (512) 475-4879

TITLE 22. EXAMINING BOARDS

PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

SUBCHAPTER B. RULES OF PRACTICE

22 TAC §681.41

The Texas Behavioral Health Executive Council adopts amendments to §681.41, relating to General Ethical Requirements. Section 681.41 is adopted without changes to the proposed text as published in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3681) and will not be republished.

Reasoned Justification.

The amended rule clarifies a licensee's duty to take reasonable action in response to actions by third-parties.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The rule pertains to the scope of practice, standards of care, or ethical practice for the practice of professional counseling. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted 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 adopts 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.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts 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.

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 November 1, 2021.

TRD-202104392
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Effective date: November 21, 2021
Proposal publication date: June 18, 2021
For further information, please call: (512) 305-7706

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SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §681.72

The Texas Behavioral Health Executive Council adopts amendments to §681.72, relating to Required Application Materials. Section 681.72 is adopted without changes to the proposed text as published in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3684) and will not be republished.

Reasoned Justification.

The amended rule is necessary to ensure the regulatory standard for substantial equivalency comports with the underlying statutory requirement.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The rule pertains to the qualifications necessary to obtain a license to practice professional counseling. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted 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 adopts 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.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts 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.

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 November 1, 2021.

TRD-202104393
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Effective date: November 21, 2021
Proposal publication date: June 18, 2021
For further information, please call: (512) 305-7706

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22 TAC §681.73

The Texas Behavioral Health Executive Council adopts amendments to §681.73, relating to Application for Art Therapy Specialty Designation. Section 681.73 is adopted with changes to the proposed text as published in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3686). The rule will be republished.

Reasoned Justification.

The amended rule is necessary because the agency has received information that the American Art Therapy Association is being replaced as an accrediting body. This amended rule will allow the agency to rely upon accreditation by its successor.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The rule pertains to the qualifications necessary to obtain a license to practice professional counseling. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted 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 adopts 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.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts 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.

§681.73. Application for Art Therapy Specialty Designation.

(a) A person applying for licensure with an art therapy specialty designation must:

(1) meet the requirements for an LPC license set out in this chapter;

(2) hold either:

(A) a master's or doctoral degree in art therapy that includes 700 hours of supervised practicum from an accredited school; or

(B) all of the following:

(i) a master's degree in a counseling-related field;

(ii) a minimum of 21 semester hours or the equivalent of sequential course work in the history, theory, and practice of art therapy; and

(iii) 700 hours of supervised practicum from an accredited school;

(3) have the experience requirements set out in subsection (c) of this section; and

(4) submit documentation of successful completion of the Certification Examination in Art Therapy of the Art Therapy Credentials Board.

(b) The Council will accept an individual course from an art therapy program accredited through the American Art Therapy Association (or its successor) as satisfying the education requirements set out in §681.82 of this title (relating to Academic Requirements) if not less than 75% of the course content is substantially equivalent to the content of a course required in §681.83 of this title (relating to Academic Course Content).

(c) As part of the supervised experience requirements for art therapy specialty designation under the Act, §503.303, an applicant must fulfill the requirements of §§681.91 - 681.93 of this title (relating to Application and Licensing) and must have the following:

(1) 1,500 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's or doctoral degree in art therapy that includes 700 hours of practicum; or

(2) 2,000 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's degree in counseling or a counseling related field and has a minimum of 21 semester hours or the equivalent of sequential course work in the history, theory, and practice of art therapy with 700 hours practicum.

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 November 1, 2021.

TRD-202104394
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Effective date: November 21, 2021
Proposal publication date: June 18, 2021
For further information, please call: (512) 305-7706

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22 TAC §681.82

The Texas Behavioral Health Executive Council adopts amendments to §681.82, relating to Academic Requirements. Section 681.82 is adopted without changes to the proposed text as published in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3688). The rule will not be republished.

Reasoned Justification.

The amended rule is necessary to ensure the minimum degree requirement applies equally to counseling and counseling-related degrees. Additionally, the amended rule will streamline the application process for qualified out of state applicants.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The rule pertains to the qualifications necessary to obtain a license to practice professional counseling. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted 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 adopts 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.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts 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.

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 November 1, 2021.

TRD-202104395
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Effective date: November 21, 2021
Proposal publication date: June 18, 2021
For further information, please call: (512) 305-7706

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22 TAC §681.114

The Texas Behavioral Health Executive Council adopts amendments to §681.114, relating to Licensing of Military Service Members, Military Veterans, and Military Spouses. Section 681.114 is adopted without changes to the proposed text as published in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3691) and will not be republished.

Reasoned Justification.

The amended rule is necessary to determine substantial equivalency for out of state licensees that are military service members, military veterans, and military spouses.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The rule pertains to the qualifications necessary to obtain a license to practice professional counseling. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted 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 adopts 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.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts 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.

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 November 1, 2021.

TRD-202104396

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Effective date: November 21, 2021
Proposal publication date: June 18, 2021
For further information, please call: (512) 305-7706

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SUBCHAPTER D. SCHEDULE OF SANCTIONS

22 TAC §681.205

The Texas Behavioral Health Executive Council adopts amendments to §681.205, relating to Schedule of Sanctions. Section 681.205 is adopted without changes to the proposed text as published in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3693) and will not be republished.

Reasoned Justification.

The amended rule is necessary to match other corresponding rule amendments referenced in this rule.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The rule pertains to a schedule of sanctions. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted 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 adopts 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.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts 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.

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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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Effective date: November 21, 2021
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For further information, please call: (512) 305-7706

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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 adopts amendments to §883.1, relating to Renewal of a License. Section 883.1 is adopted without changes to the proposed text as published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4973). The rule will not be republished.

Reasoned Justification.

The amended rule modifies 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.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter voiced her support for the amendment to this rule.

Agency Response.

The Executive Council appreciates the commenter's support.

Statutory Authority.

The rule is adopted 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 adopts 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 adopts this 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 adopts 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.

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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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Effective date: November 21, 2021
Proposal publication date: August 13, 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 1. MISCELLANEOUS PROVISIONS SUBCHAPTER D. LOW-THC CANNABIS FOR COMPASSIONATE USE

25 TAC §1.65

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts new §1.65, relating to Compassionate-use Research and Reporting. The new section is adopted with changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5164). The rule will be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to comply with House Bill (H.B.) 1535, 87th Legislature, Regular Session, 2021, which amended Texas Health and Safety Code, Chapter 487 by adding Subchapter F, Compassionate-use Research and Reporting. H.B. 1535 requires the Executive Commissioner of HHSC to adopt rules to implement Subchapter F. H.B. 1535 also states that a compassionate-use institutional review board (CIRB) may be established to evaluate, approve, and oversee research programs to study the medical use of low-THC cannabis and must submit written reports that describe and assess the research findings to HHSC and the Legislature. The Executive Commissioner charged the implementation of H.B. 1535 to DSHS.

COMMENTS

The 31-day comment period ended September 20, 2021.

During this period, DSHS received comments regarding the proposed rule from seven commenters, including Texas Council for Developmental Disabilities, PharmaCann Inc., and five individuals. A summary of comments relating to new §1.65 and DSHS's responses follows.

Comment: One commenter interpreted the rule meant that DSHS would create the CIRB and questioned the purpose of creating a duplicate CIRB when current institutional review boards (IRBs) already support cannabis research looking at both cannabis as a medicine and the safety of cannabis. This commenter urged DSHS to reassign funding for the creation of this new CIRB to sponsor legitimate clinical trials.

Response: DSHS disagrees with the commenter's interpretation but made minor grammatical changes to §1.65(a) to clarify the rule language. This rule does not create another IRB. Researchers can continue to use the existing IRB system in accordance with Texas Health and Safety Code §487.253(b). There is no state funding allocated to creating a new CIRB at DSHS.

Comment: One commenter suggested the rule is unclear about what entity will establish the CIRB, and stated the rule syntax might indicate DSHS will create the CIRB but there is no defined "membership or criteria." This commenter recommended DSHS expands the rule to "constitute an effective and ethical CIRB for Texas."

Response: DSHS declines to expand the rule to constitute one CIRB for Texas. Instead of creating one CIRB hosted at DSHS, H.B. 1535 seeks to establish one or more CIRBs to evaluate and approve proposed research programs to study the medical use of low-THC cannabis. The criteria for establishing the CIRB is described in Texas Health and Safety Code §487.253.

Comment: One commenter indicated §1.65(f)(2) is ambiguous and recommended structural changes for clarification.

Response: DSHS agrees and made minor grammatical edits to clarify the rule language.

Comment: Two commenters suggested the requirement in Texas Health and Safety Code §487.253(b) that an IRB be affiliated with a dispensing organization creates a potential for unethical behavior and limits the researchers' ability to evaluate risks and benefits of a larger range of THC products.

Response: DSHS declines to revise the rule in response to this comment. Texas Health and Safety Code §487.253 requires the CIRB to be affiliated with a dispensing organization and meet at least one other condition outlined in §487.253(b)(1) - (5).

Comment: One commenter asked if conditions added in §1.65 will also be added to the list of conditions in Texas Administrative Code, Title 25 §1.61.

Response: DSHS declines to revise the rule in response to this comment. Texas Administrative Code Title 25 §1.61 is specific to Texas Occupations Code §169.001(1-a), related to incurable neurodegenerative diseases.

Comment: One commenter expressed support for H.B. 1535 and commended Texas Legislators for creating an informed path to study the impacts of cannabis in clinical treatment settings.

Response: No change is needed in response to this comment.

Comment: One commenter stated that Texas made the wrong decision by not leaving medical decisions for each individual patient to their physician. This commenter also recommended "changes with many organic choices of cannabis oils, edibles, flowers."

Response: DSHS declines to revise the rule in response to this comment. Texas Health and Safety Code, Chapter 487, Subchapter F, does not restrict the type of low-THC cannabis that can be studied. Texas Occupations Code §169.001(3) defines Low-THC Cannabis as the plant Cannabis sativa L., and any part of that plant or any compound, manufacture, salt, derivative, mixture, preparation, resin, or oil of that plant that contains not more than one percent by weight of tetrahydrocannabinols.

Comment: One commenter suggested adding details about how to become a "cannabis caregiver" and allowing patient caregivers to "cultivate their medication" with a physician assuming "the right to terminate patient licensing rendering the caregiver license invalid."

Response: DSHS disagrees and declines to add details relating to "cannabis caregivers." The licensing for cannabis cultivation is beyond the scope of this rule. DSHS does have the statutory authority to set such standards.

Comment: One commenter recommended including asthma to the rule.

Response: DSHS declines to revise the rule in response to this comment. Section 1.65 does not dictate the medical conditions for proposed studies. A CIRB established in accordance with Texas Health and Safety Code §487.253 will evaluate and approve proposed conditions.

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, Chapter 487, Subchapter F.

§1.65. Compassionate-use Research and Reporting.

(a) One or more compassionate-use institutional review boards (CIRBs) may be established to evaluate and approve proposed research to study the medical use of low-THC cannabis, in accordance with Texas Health and Safety Code §487.253.

(b) When seeking approval from a CIRB, the principal investigator of a proposed research program must clearly identify the medical condition for which a patient will be treated with low-THC cannabis.

(c) A principal investigator shall only study the use of low-THC cannabis in treating the medical condition identified in the proposed research program application approved by a CIRB.

(d) The CIRB shall specify an end date to any study it approves. A study may terminate earlier than the date specified by the CIRB if the principal investigator chooses to end the study early. However, a CIRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the CIRB's requirements or that has been associated with unexpected serious harm to subjects.

(e) Approval of a research program by a CIRB is not transferable to another research program.

(f) A medical condition may be treated with low-THC cannabis as part of an approved research program if:

(1) treatment is overseen by a CIRB;

(2) treatment is administered by a physician in accordance with Texas Occupations Code §169.002 and the physician is certified by a CIRB to participate in the program;

(3) the patient is a resident of Texas; and

(4) the patient or, if the patient is a minor or lacks capacity to consent, a parent, guardian, or conservator, signs a written informed consent form provided by the approved research program.

(g) Reports.

(1) Not later than October 1 of each year, each CIRB must submit a written report that describes and assesses the research findings of each approved research program to the Texas Department of State Health Services.

(2) Not later than October 1 of each even-numbered year, each CIRB must submit a written report that describes and assesses the research findings of each approved research program to the Legislature.

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 October 28, 2021.

TRD-202104355
Scott A. Merchant
Interim General Counsel
Department of State Health Services
Effective date: November 17, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 776-3829

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 555. NURSING FACILITY ADMINISTRATORS

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §§555.4 and 555.11 - 555.16; new §§555.3 and 555.11 - 555.18; and amendments to §§555.1, 555.2, 555.31 - 555.42, and 555.51 - 555.57, in Texas Administrative Code (TAC) Title 26, Part 1, Chapter 555, concerning Nursing Facility Administrators.

Amendments to §§555.2, 555.32, 555.41, 555.42, 555.55, and 555.56, and new §555.18 are adopted with changes to the proposed text as published in the May 7, 2021, issue of the *Texas Register* (46 TexReg 2985). These rules will be republished.

Amendments to §§555.1, 555.31, 555.33 - 555.40, 555.51 - 555.54, and 555.57; new §§555.3 and 555.11 - 555.17; and the repeal of §§555.4 and 555.11 - 555.16 are adopted without changes to the proposed text as published in the May 7, 2021, issue of the *Texas Register* (46 TexReg 2985). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted rules amend existing, add new, and repeal portions of the nursing facility administrators (NFA) licensure requirements to correspond with the National Association of Long Term Care Administrators Board (NAB) requirements, including reciprocity. This includes adopting the NAB Administrator-in-Training (AIT) manual and preceptor training and allowing more flexibility with reciprocity, such as license by endorsement and accepting internships or AIT completed in other states or a NAB accredited program.

The adopted rules amend Subchapter A, General Information, by adding new §555.3, Schedule of Fees. The new §555.3 adjusts the administrative and licensure fees collected by HHSC and other administrative fees collected by the NAB designee or contractor.

The adopted rules amend Subchapter C, Licenses, §555.31 and §555.41, to implement House Bill 1342, 86th Legislature, Regular Session, 2019, which requires HHSC to eliminate certain grounds for disqualification for an occupational license based on prior criminal convictions that are unrelated to the duties and responsibilities of an occupational license. This includes requiring a licensing authority to provide an applicant an opportunity to submit relevant information in the event of a potential denial of a license based on prior criminal convictions.

The adopted rules amend Subchapter C, Licenses, §555.42, to implement Senate Bill 1200, 86th Legislature, Regular Session, 2019, which allows military spouses who have occupational licensing from other states to engage in that occupation without obtaining an additional license by following the notification and reciprocal licensing procedures laid out in the rule.

The adopted rules amend Subchapter A, General Information, §555.2, to implement House Bill 139, 87th Legislature, Regular Session, 2021, which added the term Space Force to the Occupations Code definition of Armed Forces.

NFAs will be able to take required training, to become or maintain certification as a preceptor, at their convenience and via computer-based training (CBT), instead of having to travel to an in-person training location. The in-person training is currently held twice a year. On-demand CBT will allow preceptors to complete the training at a time that works for them, and without incurring travel costs. Allowing reciprocity for an individual credentialed as a Health Services Executive will also streamline the process for obtaining credentialing as an NFA.

The adopted rules also respond to challenges presented by the COVID-19 pandemic and the need for greater awareness and emphasis on infection control and personal protective equipment by increasing infection control training and continuing education requirements for NFAs.

COMMENTS

The 31-day comment period ended June 7, 2021. During this period, HHSC received comments regarding the proposed rules from four commenters: representatives from the Texas Health Care Association, LeadingAge Texas, and Texas Long-Term Care Ombudsman, and a private citizen. A summary of comments relating to the NFA proposed rules and HHSC's responses follows.

Comment: Regarding §555.2, Definitions, a commenter had a concern with the definition of abuse. The commenter indicated that because licensure of NFAs is very closely related to the operation of nursing facilities, the commenter recommends making definitions consistent with the definitions used in the nursing facility regulations. The commenter also requested that the definition of abuse not include the concept of negligence.

Response: HHSC declines to make the requested change. The definition of abuse in the NFA rules is consistent with the definitions of abuse in the nursing facility rules and Texas Health and Safety Code §242.061 and §260A.001. These provisions all include negligent acts in the definition of abuse. Accordingly, HHSC does not believe it is able to remove negligent acts from the definition of abuse in the NFA rules.

Comment: Regarding §555.11(a)(4) and (5), Application Requirements, a commenter requested that HHSC change the education and experience requirements to be an NFA. The commenter recommended that an NFA have, at a minimum, a bachelor's degree and hands-on health care experience, such as experience as a registered nurse, nurse practitioner, or physician. The commenter believes that NFAs with hands-on health care experience would improve the quality of care for nursing facility residents.

Response: HHSC declines to make the requested change. The minimum requirement for a license is a bachelor's degree. Currently, there is no requirement for health care experience. To limit applicants to registered nurses, advanced practice registered nurses, and physicians would severely limit the applicant pool and would also pull individuals from clinical care to be NFAs.

Comment: A commenter requested a copy of the Reciprocity Licensing Questionnaire mentioned in §555.11(c)(1).

Response: HHSC will provide the reciprocity questionnaire when it is finalized.

Comment: A commenter requested a good cause exception to the requirement in §555.11(e) that an applicant for an NFA license must meet all the requirements for licensure within one year after HHSC receives the application for licensure. The com-

menter recommends the good-cause exception so that an applicant has longer than one year to meet the requirements if the applicant can show good cause for the delay, such as residing in a declared disaster during a portion of the year following the application.

Response: HHSC declines to make the requested change. The applicant determines when they submit their application for licensure. HHSC does not specify when they must submit an application for initial license. The exception for natural disasters could be included in a governor's waiver approved during the disaster.

Comment: Regarding the licensure requirements in §555.12(a)(5) for an applicant with an NFA license issued by a state other than Texas, a commenter expressed concern that the rules appear to require three-years management experience in addition to a baccalaureate degree or a master's degree. The commenter's main concern is that this would place an unreasonable burden on out-of-state administrators in excess of the requirements for an in-state administrator. The commenter recommended that an applicant with an NFA license issued by a state other than Texas and a baccalaureate degree in health administration, health services administration, health care administration, or nursing be required to have two years of management experience rather than three.

Response: HHSC declines to make a change to the rules in response to this comment. The three years of management experience or a master's degree and one year of management experience is a way for the individual to have a lower internship requirement. Management experience or a master's degree is not a requirement of licensure. If the applicant does not have the management experience or a master's degree, they are required to have the 1,000-hour internship, which can be satisfied through an internship received in Texas or another state.

Comment: Regarding §555.12, Licensure Requirements, a commenter expressed concern that the rules require an out-of-state administrator to have either a baccalaureate degree in certain subjects or a baccalaureate degree in any subject with 15 hours of courses in the NAB domains, which are resident care and quality of life, human resources, finance, physical environment and atmosphere, and leadership and management. The commenter's concern is that this would place an unreasonable burden on out-of-state administrators. The commenter also expressed concern that requiring a baccalaureate degree would impede an NFA licensed in another state who does not have a baccalaureate degree from moving to Texas. The commenter recommended creating a mentor program that would allow out-of-state applicants to apply for a provisional license without meeting all the requirements for licensure.

Response: HHSC declines to make the requested change. An applicant in Texas must meet the same requirements as an applicant licensed in another state. If an applicant's baccalaureate degree is in health administration, health services administration, health care administration, or nursing and includes coursework encompassing the five domains of the NAB, the applicant does do not also need the additional hours of courses in the NAB domains. Eliminating one or more of these requirements for out-of-state applicants has the potential to reduce the quality of care a nursing facility resident receives. Requiring course work in the NAB domains for an applicant with a baccalaureate degree in any subject ensures potential administrators can be successful in the complex task of running a NF. Furthermore, 67 percent of US jurisdictions require a baccalaureate degree to become an NFA. Thus, HHSC does not believe that requiring a baccalaureate degree will significantly impact the availability of NFAs in Texas.

Comment: Regarding §555.13(a)(2), Internship Requirements, a commenter requests that HHSC revise the requirement that an internship be in a nursing facility with a minimum of 60 beds to allow greater flexibility for smaller nursing facilities to onboard and train future NFAs. The commenter indicates the current 60-bed requirement does not consider actual occupancy. The commenter recommends lowering the 60-bed minimum to 40 beds or including an occupancy threshold as an alternative to the 60-bed requirement that reflects current statewide occupancy rates. The commenter states that in terms of training standards, a 40-bed nursing facility that maintains full occupancy can offer the same if not a better experience than a 60-bed facility at 65 percent occupancy or less. As an alternative, the commenter suggests that the rule permit HHSC to grant an exception to the 60-bed requirement for any facility, not just a facility located in a rural area and more than 50 miles away from a 60-bed facility.

Response: HHSC declines to make the requested changes. The adopted rule adds an exception to the 60-bed requirement. The rule language allows for flexibilities geared toward smaller rural providers that have less than 60-beds. HHSC data showed that most regions have an adequate number of 60-bed plus facilities to provide internship opportunities. The data also showed that facilities with less than 60-beds were concentrated in more rural parts of the state.

Comment: Regarding §555.13(a)(5), Internship Requirements, and §555.35(a)(4), Continuing Education Requirements for License Renewal, a commenter recommends requiring training on resident rights for licensure and continuing education. The commenter notes that they routinely identify training deficits in administrators, including facility administrators, who do not allow residents to make their own choices about their care, prohibit residents from leaving the facility, and open residents' mail, despite those rights never being waived.

Response: HHSC declines to make the requested changes. The five domains of the NAB include resident rights. The AIT manual and the examination also cover resident rights.

Comment: Regarding §555.18(a), Examinations and Requirements to Take the Examinations, a commenter is concerned that the rule conflicts with §555.12 and §555.13 and recommends we revise or delete the conflicting language.

Response: HHSC agrees with the comment and has removed the conflicting rule language in §555.18(a). HHSC also removed an unnecessary reference to the state examination.

Comment: A commenter noted that §§555.31, 555.32, 555.33, 555.34, and 555.37 all refer to HHSC and not a specific division of HHSC that handles licensing and credentialing. To clarify the department of HHSC that performs these tasks, the commenter recommends that each section of the rules clarify that NFA licensing is administered through the Long Term Care Licensing and Credentialing Division.

Response: HHSC declines to make the requested change. Specifying an HHSC division in rule limits HHSC's ability to change the division or name of the division that handles a specific task. A rule amendment would have to be implemented prior to HHSC being able to make these kinds of organizational changes.

Comment: A commenter requested that HHSC remove the requirement in §555.32(a)(4)(B) that an applicant with a license in

another state have two years of experience as an administrator to be eligible for a provisional license. The commenter stated there is a shortage of NFAs and the requirements for licensure are too stringent. The commenter proposed removing the experience requirement altogether and permitting any licensed NFA to get a provisional license.

Response: HHSC agrees to reduce the experience requirement from two years to one. This change will allow more individuals who do not meet the requirements for reciprocity to meet the requirements for a provisional license. One year of full-time experience is about 2,000 hours. Given that an internship is 1,000 hours of intensive training with a preceptor, 2,000 hours of work experience is substantially equivalent.

Comment: Regarding §555.35(a)(3), which requires continuing education in infection control and personal protective equipment (PPE) use every two years, a commenter is concerned this requirement is an overreaction to the COVID-19 pandemic and that infection control practices will not change every two years, making this requirement unnecessary. The commenter recommended that the rule require this continuing education every four years. The commenter also requested to see the infection control and PPE course created by HHSC.

Response: HHSC declines to make the requested change. Infection control is one of the top cited tags every year for NFs. The requirement for refresher training every two years is not only meant to address any changes within the two years, but to serve as a reminder or refresher on the information in the course. NFAs may not always be involved in day-to-day utilization of the information but are expected to lead people who are and develop and implement infection control policies and procedures. The infection control and PPE course created by HHSC is now available on the HHSC website.

Comment: A commenter indicated that §555.37(a)(1), which permits HHSC to refuse to renew a license when the licensee commits a violation of §555.54, does not make clear whether HHSC can deny a license to an NFA who enters into a settlement agreement. The commenter recommended excluding settlement agreements from reasons why a license may be denied.

Response: HHSC declines to make the requested change. The rule language in §555.54(10) specifies that HHSC may sanction a licensee who does not comply with the settlement agreement rather than a licensee who enters into a settlement agreement.

Comment: Regarding §555.41(c), which concerns the licensure of persons with criminal backgrounds, a commenter is concerned the language implies that a conviction for certain crimes would automatically bar an application for licensure. The commenter recommends that this language be changed to give HHSC discretion to deny a license to an applicant who is convicted of one of the listed crimes.

Response: HHSC declines to make the requested change. The language in the rule allows some discretion in some circumstances, as required by Occupations Code Chapter 53. If an applicant has been convicted of a crime listed in §555.41(c), HHSC will propose to deny the applicant's application and give the applicant due process, as required by §555.41(g), to address the factors listed in §555.41(d). Under Chapter 53 of the Occupations Code, HHSC must give an applicant a chance to explain why HHSC should not deny the license based on a previous conviction, even if that conviction is an automatic bar to licensure or employment. The language in this provision was drafted to comply with the changes made in 2019 to Chapter 53 of the Occupations Code.

Comment: Regarding §555.51(b), Referral and Complaint Procedures, a commenter recommended that the rule section include specific contact information to file a complaint against an NFA, rather than directing complainants to the HHSC website. The commenter states that, at a minimum, a toll-free phone number and email address should be included; otherwise, it is unclear where on the HHSC website to find this information.

Response: HHSC declines to make the requested change. The HHSC website has details on the process for filing a complaint. In addition, putting specific phone numbers or addresses in rule limits the ability to make changes to HHSC's contact information. HHSC would have to initiate a rule project in order to update contact information in this section.

Comment: A commenter recommends deleting §555.53(c), which provides that HHSC may issue a hearing notice for the original sanction proposed before the informal review if the licensee does not accept a modified sanction resulting from an informal review.

Response: HHSC declines to make the requested change. The purpose of the informal review is for the NFA to present HHSC additional information or documentation for the purpose of dismissing or reducing the originally proposed sanction. If the informal review results in HHSC proposing a modified sanction, an NFA has the choice to either accept the modified sanction or not. If the NFA chooses not to accept the modified sanction, then HHSC may proceed to impose the original sanction, which the NFA may either accept or contest through a formal hearing.

Comment: Regarding §555.55(a)(1), a commenter is concerned that with recent staffing shortages related to the public health emergency that an NFA may not be able to employ sufficient staff to adequately meet the needs of nursing facility residents as determined by care outcomes, which may result in sanctions against their license. The commenter proposes the rule be changed to "licensee must use all reasonable resources available to employ sufficient staff to adequately meet the needs of nursing facility residents as determined by care outcomes."

Response: HHSC declines to make the requested change. By using the terms "sufficient" and "adequately," HHSC offers flexibility on this requirement.

Comment: Regarding §555.55(a)(16), a commenter is concerned sanctions could be enforced because the rule does not depend on the NFA knowingly allowing an employee, contractor, or volunteer to make misrepresentations or fraudulent statements about the operation of a nursing facility. The commenter states other sections of the rule require that an administrator have knowledge of a wrongful act before being subject to penalty. The commenter recommends the following language: A licensee must not make or knowingly allow an employee, contractor, or volunteer to make misrepresentations or fraudulent statements about the operation of a nursing facility.

Response: HHSC agrees with the comment and has added the term "knowingly" to §555.55(a)(16).

Comment: Regarding §555.55(a)(17), a commenter is concerned sanctions could be enforced because the rule does not depend on the NFA knowingly allowing an employee's, a contractor's, or another person's action or inaction to result in harassment or intimidation of any person for purposes of coercing that person to use the services or equipment of a particular

health agency or facility. The commenter states other sections of the rule require that an administrator have knowledge of a wrongful act before being subject to penalty. The commenter recommends the following language: A licensee must not knowingly allow an employee's, a contractor's, or another person's action or inaction to result in harassment or intimidation of any person for purposes of coercing that person to use the services or equipment of a particular health agency or facility.

Response: HHSC agrees with the comment and has added the term "knowingly" to §555.55(a)(17).

Comment: A commenter is concerned that the language in §555.56(d), permanently disqualifying a licensee for allowing their license to expire instead of accepting a proposed license revocation, is too harsh a penalty. The commenter requests a process by which a person may re-apply after training, application, and a set time period. The commenter recommends the following language: "A licensee allowing a license to expire instead of accepting a proposed license revocation is disqualified from licensure in Texas for a period of no less than five years following the expiration of the prior license. The applicant NFA must demonstrate an additional 12 hours of education on the topic leading to the prior license revocation action before applying for re-licensure."

Response: HHSC partially agrees with this comment. HHSC retained the language that the licensee may be permanently disqualified from licensure and added that, in certain circumstances at HHSC's discretion, the licensee may be disqualified from licensure for five years.

HHSC changed the term "Long-term Care Regulatory" to the term "Long-term Care Regulation," in §555.2(16) and (31), which is now the name of the department of HHSC responsible for long-term care regulation.

HHSC updated the Texas Administrative Code reference in §555.2(35) from 40 TAC Chapter 19 to 26 TAC Chapter 554. Chapter 19 was administratively transferred to Chapter 554 effective January 15, 2021.

HHSC amended §555.18(b) to remove a reference to an applicant with a health services executive (HSE) qualification completing a 500-hour internship. An applicant with an HSE qualification is not required to complete a 500-hour internship.

HHSC amended §555.42 to add a new subsection (b) and renumbered the rule accordingly. This new subsection permits a military spouse to apply for a waiver of the application fee and the initial license fee. This change was made for consistency with other HHSC Long-term care regulation rules. HHSC also amended §555.42(g)(3)(C) to provide that a military spouse may prove residence in this state with a copy of the permanent change of station order for the military service member to whom the military spouse is married.

SUBCHAPTER A. GENERAL INFORMATION

26 TAC §§555.1 - 555.3

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

§555.2. Definitions.

The words and terms in this chapter have the following meanings, unless the context clearly indicates otherwise:

(1) Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including 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), sexual harassment, sexual coercion, or sexual assault.

(2) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(3) Administrator-in-training (AIT)-- A person undergoing an internship under a HHSC-approved certified preceptor.

(4) Administrator of Record--The individual who is listed as the facility's licensed nursing facility administrator with the HHSC Licensing and Credentialing Section.

(5) Applicant--A person applying for a Texas nursing facility administrator (NFA) license.

(6) Armed forces of the United States--The Army, Navy, Air Force, Coast Guard, Space Force, or Marine Corps of the United States, including reserve units of those military branches.

(7) Complaint--An allegation that an NFA violated one or more of the licensure rules or statutory requirements.

(8) Domains of the National Association of Long Term Care Administrator Boards (NAB)--The five categories for education and continuing education of the NAB, which are resident care and quality of life; human resources; finance; physical environment and atmosphere; and leadership and management.

(9) Formal hearing--A hearing held by the State Office of Administrative Hearings to adjudicate a sanction taken by HHSC against an NFA.

(10) Good standing--In Texas an NFA is in good standing if the NFA is in compliance with the rules in this chapter and, if applicable, the terms of any sanction imposed by HHSC. An NFA licensed or registered in another state is in good standing if the NFA is in compliance with the NFA licensing or registration rules in the other state and, if applicable, the terms of any sanction imposed by the other state.

(11) Health services executive (HSE) --An individual who has entry-level competencies of a nursing facility, assisted living community, or home and community-based service provider in this jurisdiction or another jurisdiction. The HSE has met NAB's minimum standards for qualification as an HSE.

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

(13) Internship--The training period in a nursing facility for an AIT. When HHSC accepts internship hours completed in another state, the hours must be completed in a facility that qualifies as a nursing facility or nursing home under the laws of the other state.

(14) License--An NFA license or provisional license.

(15) Licensee--A person licensed by HHSC as an NFA.

(16) Long-term Care Regulation--The department of HHSC responsible for long-term care regulation, including determining nursing facility compliance with licensure and certification requirements and the regulation of NFAs.

(17) Management experience--Full-time employment as a department head, assistant nursing facility administrator, or licensed professional supervising two or more employees in a nursing facility, including a nursing facility outside of Texas, or skilled nursing hospital unit.

(18) Military service member--A person who is on active duty.

(19) Military spouse--A person who is married to a military service member.

(20) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(21) Misappropriation of resident property--Taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident

(22) NAB examination--The national examination developed by NAB that applicants must pass in combination with the state licensure examination to be issued a license to practice nursing facility administration in Texas. The NAB examination consists of two modules: Core of Knowledge and Line of Service.

(23) National Association of Long Term Care Administrator Boards (NAB)--State boards or agencies responsible for the licensure of NFAs.

(24) National Continuing Education Review Service (NCERS)--The part of NAB that approves and monitors continuing education activities for NFAs.

(25) Neglect--Failure to provide goods or services, including medical services, that are necessary to avoid physical or emotional harm, pain, or mental illness.

(26) Nursing facility--A facility licensed in accordance with THSC Chapter 242.

(27) Nursing Facility Administrator (NFA)--An individual licensed to engage in the practice of nursing facility administration, regardless of whether the individual has an ownership interest in the facility.

(28) Nursing Facility Administrators Advisory Committee (NFAAC)--The advisory committee established by THSC §242.303 (the text of Subchapter I is effective until federal determination of failure to comply with federal regulations).

(29) Preceptor--An NFA certified by HHSC to provide supervision to an AIT.

(30) Professional examination services (PES)--The testing agency that administers the NAB and state examinations to applicants seeking licensure as an NFA.

(31) Referral--A recommendation made by Long-term Care Regulation staff to investigate an NFA's compliance with licensure requirements when deficiencies or substandard quality of care deficiencies are found in a nursing facility, as required by Title 42 Code of Federal Regulations §488.325.

(32) Sanctions--An adverse licensure action against an NFA. In Texas, a sanction is one of the actions listed in §555.57 of this chapter (relating to Schedule of Sanctions).

(33) Self-study course--A NAB-approved education course that an individual pursues independently to meet continuing education requirements for license renewal.

(34) State examination--The state licensure examination that applicants must pass, in combination with the NAB examination, to be issued a license to practice nursing facility administration in Texas.

(35) Substandard quality of care--For a Medicare- or Medicaid-certified facility, this term has the meaning given in Title 42 Code of Federal Regulations §488.301. For a licensed-only facility, this term has the meaning given in Texas Administrative Code, Title 26, Part 1, §554.101(139).

(36) THSC--Texas Health and Safety Code.

(37) Traditional business hours--Monday through Friday from 8:00 a.m. until 5:00 p.m.

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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For further information, please call: (512) 761-6041

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26 TAC §555.4

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; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under

that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

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SUBCHAPTER B. REQUIREMENTS FOR LICENSURE

26 TAC §§555.11 - 555.16

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; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

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26 TAC §§555.11 - 555.18

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; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

§555.18. Examinations and Requirements to Take the Examinations.

(a) Except as provided in subsection (b) of this section, an applicant seeking a license as a nursing facility administrator (NFA) from the Texas Health and Human Services Commission (HHSC) must pass the following examinations:

(1) the state examination on nursing facility requirements in Texas; and

(2) the NAB examinations.

(b) An applicant who meets the academic and internship requirements by presenting evidence of a health services executive (HSE) qualification must pass the state examination.

(c) An applicant registers for examination at the designated NAB website by:

(1) submitting an application for approval to take the examination; and

(2) paying the applicable state examination and NAB examination fees on-line.

(d) HHSC sends an e-mail notifying an applicant of the applicant's eligibility to take the examinations.

(e) An applicant must not take any examination without HHSC approval.

(f) An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(g) An applicant completes the on-line state and NAB examinations at professional examination services.

(h) HHSC notifies an applicant of examination scores after receiving examination results.

(i) An applicant who fails an examination and wants to retake it must pay the appropriate state or NAB examination fee.

(j) An applicant who fails the state or NAB examination three consecutive times must complete an additional 1,000-hour administrator-in-training internship before retaking the examination.

(k) An applicant previously licensed as an NFA and whose license expired 365 or more days before the applicant reapplies for a license or who voluntarily surrendered the license must retake the state examination to obtain a new license.

(l) An applicant previously licensed as an NFA and whose license expired 365 or more days before the applicant reapplies for a license, or who voluntarily surrendered the license, must retake the NAB examination to obtain a new license if more than five years have passed since the applicant passed the NAB examination.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. LICENSES

26 TAC §§555.31 - 555.42

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

§555.32. Provisional License.

(a) The Texas Health and Human Services Commission (HHSC) issues a provisional license to an applicant currently licensed or registered as a nursing facility administrator (NFA) in another state who submits the following to HHSC:

(1) complete and notarized Provisional Licensure Questionnaire and Nursing Facility Administrator License Application forms;

(2) the application fee;

(3) the provisional license fee; and

(4) proof of the following:

(A) a license and good standing status in another state with licensing requirements substantially equivalent to the Texas licensure requirements;

(B) employment for at least one year as an administrator of record of a nursing facility in applicant's state;

(C) a passing score on the National Association of Long Term Care Administrator Boards examination and the state examination; and

(D) sponsorship by an NFA licensed by HHSC and who is in good standing, unless HHSC waives sponsorship based on a demonstrated hardship.

(b) A provisional license expires 180 days from the date of issue.

(c) HHSC issues an initial license certificate to a provisional license holder who satisfies the requirements for a license in §555.12 of this chapter (relating to Licensure Requirements) and §555.31 of this subchapter (relating to Initial license).

(d) HHSC may determine that a criminal conviction or sanction taken in another state is a basis for pending or denying a provisional license.

§555.41. Licensure of Persons with Criminal Backgrounds.

(a) Subject to subsection (f) of this section, the Texas Health and Human Services Commission (HHSC) may disqualify an applicant or licensee from taking an examination required by §555.18 of this chapter (relating to Examinations and Requirements to Take the Examinations), may deny an initial or renewal application for licensure, or impose a sanction listed in §555.57 of this chapter (relating to Schedule of Sanctions) if the applicant or licensee has been convicted of:

(1) an offense that directly relates to the duties and responsibilities of a nursing facility administrator (NFA);

(2) an offense listed in Article 42A.054, Code of Criminal Procedure; or

(3) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

(b) HHSC considers the following when determining if a criminal conviction directly relates to the duties, responsibilities, and job performance of an NFA:

(1) the nature and seriousness of the crime;

(2) the extent to which a license may offer an individual an opportunity to engage in the same type of criminal activity; and

(3) the relationship of the crime to the ability or fitness required to perform the duties of an NFA.

(c) HHSC has determined that a conviction of the following crimes relates to nursing facility administration and reflects an inability to perform or tendency to inadequately perform as an NFA. Accordingly, HHSC proposes to deny an application for licensure from an applicant who has been convicted of any of the following crimes:

(1) intentionally acting as an NFA without a license;

(2) attempting or conspiring to commit or committing any offense under the following chapters of the Texas Penal Code:

(A) Title 5 (offenses against persons), including homicide, kidnapping, unlawful restraint, and sexual and assault offenses;

(B) Title 7 (offenses against property), including arson, criminal mischief, robbery, burglary, criminal trespass, theft, fraud, computer crimes, telecommunications crimes, money laundering, and insurance fraud;

(C) Title 9 (offenses against public order and decency), including disorderly conduct and public indecency; or

(D) Title 10 (offenses against public health, safety, and morals), including weapons, gambling, conduct affecting public health, intoxication, and alcoholic beverage offenses;

(3) committing an offense listed in Texas Health and Safety Code (THSC) §250.006(a) or (c); or

(4) committing an offense listed in THSC §250.006(b) within the last five years.

(d) If HHSC determines an applicant or licensee has a criminal conviction that directly relates to the duties and responsibilities of an NFA, HHSC considers the following in determining whether to take an action authorized by subsection (a) of this section:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) evidence of the person's compliance with any conditions of community supervision, parole or mandatory supervision; and

(7) other evidence of the person's fitness, including letters of recommendation.

(e) HHSC may consider other crimes and pertinent information as a potential basis for denying an initial or renewal application.

(f) Convictions under federal law or the laws of another state or nation for offenses containing elements similar to offenses listed in subsection (c) of this section may be a basis for HHSC denying an initial application or imposing sanctions.

(g) A notice required under subsection (a) of this section must contain, as applicable:

(1) a statement that the applicant or licensee is disqualified from receiving the license or being examined for the license because of the applicant's or licensee's prior conviction of an offense specified in the notice, as provided in subsection (a)(2) and (a)(3) of this section; or

(2) a statement that:

(A) the final decision of the licensing authority to deny the applicant or licensee a license, or the opportunity to be examined for the license, will be based on the factors listed in subsection (d) of this section, as provided in subsection (a)(1) of this section; and

(B) the applicant or licensee has the responsibility to obtain and provide to HHSC evidence regarding the factors listed in subsection (d) of this section.

(h) If HHSC suspends or revokes a license, or denies an applicant or licensee a license or the opportunity to be examined for a license because of the applicant's or licensee's prior conviction of an offense, HHSC shall notify the person in writing of:

(1) the reason for the suspension, revocation, denial, or disqualification including any factor considered under subsection (b) and (d) of this section that served as the basis for suspension, revocation, denial, or disqualification;

(2) the procedure for judicial review; and

(3) the earliest date the applicant or licensee may appeal HHSC's action.

§555.42. Alternate Licensing Requirements for Military Service Personnel.

(a) Fee waiver based on military experience.

(1) The Texas Health and Human Services Commission (HHSC) waives the application fee described in §555.11(a)(2) of this chapter (relating to Application Requirements) and the initial license fee described in §555.31(a)(2) of this chapter (relating to Initial License) for an applicant if HHSC receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must submit a written request for a waiver with the applicant's initial license application submitted to HHSC in accordance with §555.11 of this chapter. The applicant must include with the request:

(A) documentation of the applicant's status as a military service member or military veteran that is acceptable to HHSC; and

(B) documentation of the type and dates of the service, training, and education the applicant received, and an explanation as to why the applicant's military service, training, or education substantially meets all of the requirements for licensure under this chapter.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(5) HHSC approves a request for a waiver of fees submitted in accordance with this subsection if HHSC determines that the applicant is a military service member or a military veteran and the applicant's military service, training, or education substantially meets all of the requirements for licensure under this chapter.

(b) Fee waiver for a military spouse.

(1) HHSC waives the application fee described in §555.11(a)(2) of this chapter and the initial license fee described in §555.31(a)(2) of this chapter for an applicant who is a military spouse if HHSC receives and approves a request for a waiver of fees from the applicant and documentation of the applicant's status as a military spouse.

(2) Documentation of military status that is acceptable to HHSC includes:

(A) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(B) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(3) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(c) Fee waiver based on license issued by another jurisdiction.

(1) HHSC waives the application fee described in §§555.11(a)(2) of this chapter and the provisional initial license fee

described in §555.32(a)(3) of this chapter (relating to Provisional License) for an applicant if HHSC receives and approves a request for a waiver of fees in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must include a written request for a waiver of fees with the applicant's provisional license application that is submitted to HHSC in accordance with §555.32 of this chapter. The applicant must include with the request documentation of the applicant's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(5) HHSC approves a request for a waiver of fees submitted in accordance with this subsection if HHSC determines that:

(A) the applicant holds a license in good standing in another jurisdiction with licensing requirements substantially equivalent to the requirements for a license under this chapter; and

(B) the applicant is a military service member, a military veteran, or a military spouse.

(d) Additional time for license renewal.

(1) HHSC gives a nursing facility administrator (NFA) an additional two years to complete the license renewal requirements described in §555.43 of this subchapter (relating to License Renewal) and §555.35 of this subchapter (relating to Continuing Education Requirements for License Renewal), if HHSC receives and approves a request for additional time to complete the licensing renewal requirements from an NFA in accordance with this subsection.

(2) To request additional time to complete license renewal requirements, an NFA must:

(A) submit a written request for additional time to HHSC before the expiration date of the NFA's license; and

(B) include with the request, documentation of the NFA's status as a military service member that is acceptable to HHSC, which includes a copy of a current military service order issued to the NFA by the armed forces of the United States, the State of Texas, or another state.

(3) If HHSC requests additional documentation, the NFA must submit the requested documentation.

(4) HHSC approves a request for two additional years to complete license renewal requirements submitted in accordance with this subsection if HHSC determines that the NFA is a military service member, except HHSC does not approve a request if HHSC granted the NFA a previous extension and the NFA has not completed the license renewal requirements during the two-year extension period.

(5) If an NFA does not submit the written request described by paragraph (2) of this subsection before the expiration date of the NFA's license, HHSC will consider a request after the expiration date of the license if the NFA establishes to the satisfaction of HHSC that the request was not submitted before the expiration date of the NFA's license because the NFA was serving as a military service member at the time the request was due.

(e) Credit toward internship requirements.

(1) HHSC gives an applicant credit toward the internship requirements for an administrator-in-training (AIT) described in §555.13 of this chapter (relating to Internship Requirements) based on the applicant's military service, training, or education if HHSC receives and approves a request for credit from an applicant in accordance with this subsection.

(2) To request credit for military service, training, or education, the applicant must submit a written request for credit to HHSC with the applicant's initial license application. The applicant must include, with the request, documentation of the type and dates of the service, training, and education the applicant received and an explanation as to how the applicant's military service, training, or education is substantially similar to the training or education requirements described in §555.13 of this chapter.

(3) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(4) HHSC approves a request for credit submitted in accordance with this subsection if HHSC determines that the military service, training, or education that the applicant received is substantially similar to the training or education requirements described in §555.12 of this chapter (relating to Licensure Requirements).

(f) Renewal of expired license.

(1) HHSC renews an expired license if HHSC receives and approves a request for renewal from a former NFA in accordance with this subsection.

(2) To request renewal of an expired license, a former NFA must submit a written request with a license renewal application within five years after the former NFA's license expired. The former NFA must include with the request documentation of the former administrator's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the former NFA by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former NFA by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former NFA by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former NFA's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the former NFA must submit the requested documentation.

(5) HHSC approves a request for renewal of an expired license submitted in accordance with this subsection if HHSC determines that:

(A) the former NFA is a military service member, military veteran, or military spouse;

(B) the former NFA has not committed an offense listed in Texas Health and Safety Code (THSC) §250.006(a) and has not committed an offense listed in THSC §250.006(b) during the five years before the date the former NFA submitted the initial license application; and

(C) the former NFA is not listed on the employee misconduct registry described in THSC Chapter 253.

(g) Recognition of Out-of-State License of Military Spouse.

(1) A military spouse may engage in the practice of nursing facility administration in Texas without obtaining a license, as required by §555.31 of this subchapter (relating to Initial License) or §555.32 of this subchapter (relating to Provisional License), if the spouse:

(A) is currently licensed in good standing by another jurisdiction that has licensing requirements substantially equivalent to the requirements for a license in Texas;

(B) notifies HHSC in writing of the spouse's intent to practice in Texas;

(C) submits to HHSC proof of the spouse's residence in this state and a copy of the spouse's military identification; and

(D) receives from HHSC:

(i) confirmation that HHSC has verified the spouse's license in the other jurisdiction; and

(ii) a license to practice nursing facility administration in Texas.

(2) HHSC will review and evaluate the following criteria when determining whether another state's licensing requirements are substantially equivalent to the requirement for a license under the statutes and regulations of this state:

(A) whether the other state requires an applicant to pass an examination that demonstrates competence in the field to obtain the license;

(B) whether the other state requires an applicant to meet any experience qualifications to obtain the license;

(C) whether the other state requires an applicant to meet education qualifications to obtain the license;

(D) whether the other state denies an application for licensure from an applicant who has been convicted of an offense containing elements similar to offenses listed in §555.41(c) of this subchapter; and

(E) the other state's license requirements, including the scope of work authorized to be performed under the license issued by the other state.

(3) The military spouse must submit:

(A) a written request to HHSC for recognition of the spouse's license issued by the other state;

(B) any form and additional information regarding the license issued by the other state required by the rules of the specific program or division within HHSC that licenses the business or occupation;

(C) proof of residence in this state, which may include a copy of the permanent change of station order for the military service member to whom the military spouse is married;

(D) a copy of the military spouse's identification card;

(E) proof the military service member is stationed at a military installation in Texas; and

(F) fingerprints for a Texas Department of Public Safety criminal background check to enable HHSC to confirm that the military spouse is in compliance with other laws and regulations applicable to nursing facility administration in Texas.

(4) Upon verification from the licensing jurisdiction of the military spouse's license and if the license is substantially equivalent to a Texas license, HHSC shall issue a confirmation that HHSC has verified the spouse's license in the other jurisdiction and a license to practice nursing facility administration in Texas.

(5) The license issued under paragraph (4) of this subchapter will expire three years from date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever comes first. The license issued under paragraph (4) of this subsection may not be renewed.

(6) HHSC replaces a lost, damaged or destroyed license certificate for a military spouse as provided in §555.33 of this subchapter (relating to Duplicate License), but the military spouse does not pay the duplicate license fee.

(7) The military spouse shall comply with all applicable laws, rules and standards of this state, including applicable Texas Health and Safety Code and all relevant Texas Administration Code provision.

(8) HHSC may withdraw or modify the verification letter for reasons including the following:

(A) the military spouse fails to comply with paragraph (1)(D)(i) of this section; or

(B) the military spouse's licensure required under subsection(c)(1) of this section expires or is suspended or revoked in another jurisdiction.

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 October 25, 2021.

TRD-202104303
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: November 14, 2021
Proposal publication date: May 7, 2021
For further information, please call: (512) 761-6041

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SUBCHAPTER D. REFERRALS, COMPLAINT PROCEDURES, AND SANCTIONS

26 TAC §§555.51 - 555.57

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

§555.55. Violations of Standards of Conduct.

(a) The Texas Health and Human Services Commission (HHSC) may impose a sanction listed in §555.57 of this subchapter (relating to Schedule of Sanctions) against a licensee for violations of the following nursing facility administrator (NFA) Standards of Conduct:

(1) A licensee must employ sufficient staff to adequately meet the needs of nursing facility residents as determined by care outcomes.

(2) A licensee must ensure that sufficient resources are present to provide adequate nutrition, medications, and treatments to nursing facility residents in accordance with physician orders as determined by care outcomes.

(3) A licensee must promote and protect the rights of nursing facility residents and ensure that employees, contractors, and others respect the rights of residents.

(4) A licensee must ensure that nursing facility residents remain free of chemical and physical restraints unless required by a physician's order to protect a nursing facility resident's health and safety.

(5) A licensee must report and direct nursing facility staff to report to the appropriate government agency any suspected case of abuse, neglect, or misappropriation of resident property as defined in §555.2 of this chapter (relating to Definitions).

(6) A licensee must ensure that the nursing facility is physically maintained in a manner that protects the health and safety of the residents and the public.

(7) A licensee must notify and direct employees to notify an appropriate government agency of any suspected cases of criminal activity as defined by state and federal laws.

(8) A licensee must post in the nursing facility where the licensee is employed the notice provided by HHSC that gives the address and telephone number for reporting complaints against an NFA. The notice must be posted in a conspicuous place and in clearly legible type.

(9) A licensee must not knowingly or through negligence commit, direct, or allow actions that result or could result in inadequate care, harm, or injury to a nursing facility resident.

(10) A licensee must not knowingly or through negligence allow a nursing facility employee to harm a nursing facility resident by coercion, threat, intimidation, solicitation, harassment, theft of personal property, or cruelty.

(11) A licensee must not knowingly or through negligence allow or direct an employee to contradict or alter in any manner the orders of a physician regarding a nursing facility resident's medical or therapeutic care.

(12) A licensee must not knowingly commit or through negligence allow another individual to commit an act of abuse, neglect, or misappropriation of resident property as defined in §555.2 of this chapter.

(13) A licensee must not permit another individual to use his or her license or allow a nursing facility to falsely post his or her license.

(14) A licensee must not advertise or knowingly participate in the advertisement of nursing facility services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

(15) A licensee must not knowingly allow, aid, or abet a violation by another NFA of the Texas Health and Safety Code, Chapter 242, Subchapter I (text of Subchapter I effective until federal determination of failure to comply with federal regulations), or the agency's rules adopted under that subchapter and must report such violations to HHSC.

(16) A licensee must not make or knowingly allow an employee, contractor, or volunteer to make misrepresentations or fraudulent statements about the operation of a nursing facility.

(17) A licensee must not knowingly allow an employee's, a contractor's, or another person's action or inaction to result in harassment or intimidation of any person for purposes of coercing that person to use the services or equipment of a particular health agency or facility.

(18) A licensee must not falsely bill for goods or services or allow another person to bill for goods or services other than those that have actually been delivered.

(19) A licensee must not make or file a false report or allow an employee, contractor, or volunteer to make or file a report that the licensee knows to be false.

(20) A licensee must not intentionally fail to file a report or record required by state or federal law, impede or obstruct such filings, or induce another person to impede or obstruct such filings.

(21) A licensee must not use or knowingly allow employees or others to use alcohol, narcotics, or other drugs in a manner that interferes with the performance of the licensee's or other person's duties.

(22) A licensee must not knowingly or through negligence violate any confidentiality provisions prescribed by state or federal law concerning a nursing facility resident.

(23) A licensee must not interfere with or impede an investigation by withholding or misrepresenting facts to HHSC representatives, or by using threats or harassment against any person involved or participating in the investigation.

(24) A licensee must not display a license issued by HHSC that is reproduced, altered, expired, suspended, or revoked.

(25) A licensee must not, knowingly or through negligence, allow an employee or other individual to mismanage a resident's personal funds deposited with the nursing facility.

(26) A licensee must not harass or intimidate an employee or other representative of HHSC, other government agencies, or their representatives concerning the administration of the nursing facility.

(27) A licensee must not offer or give any gift, loan, or other benefit to a person working for HHSC unless the benefit is offered or given on account of kinship or a personal relationship independent of the official status of the person working for HHSC.

(b) Negligence, as referenced in the Standards of Conduct in subsection (a) of this section, means the failure of a licensee to use such care as a reasonably prudent and careful licensee would use in similar circumstances, or failure to act as a reasonably prudent licensee would in similar circumstances.

§555.56. Violations by Unlicensed Persons.

(a) A person with an expired license must not engage in activities that require a license.

(b) A person practicing as a licensed nursing facility administrator after license expiration:

(1) commits an offense punishable as a Class B misdemeanor;

(2) is subject to local criminal prosecution; and

(3) may be referred to the Office of Attorney General for civil penalties not to exceed $1,000 per violation per day for each day the violation continues.

(c) A licensee whose license expires before an investigation is complete, may still receive:

(1) a written reprimand; or

(2) an administrative penalty.

(d) A licensee allowing a license to expire instead of accepting a proposed license revocation may be, at HHSC's discretion, disqualified from licensure in Texas permanently or for five years.

(e) A person with an expired license must return the license certificate to the Texas Health and Human Services Commission within ten (10) days of expiration.

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 October 25, 2021.

TRD-202104304
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: November 14, 2021
Proposal publication date: May 7, 2021
For further information, please call: (512) 761-6041

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 8. RATES

28 TAC §5.4702

The Commissioner of Insurance adopts new 28 TAC §5.4702, concerning the Texas Windstorm Insurance Association's rate filings and reinsurance purchases. Section 5.4702 implements House Bill 769, 87th Legislature, 2021. The section is adopted without changes to the proposed text published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5350) and will not be republished.

REASONED JUSTIFICATION. HB 769 (1) prohibits the Texas Windstorm Insurance Association (TWIA) board of directors from voting on a proposed rate increase if there is a vacancy on the board that has existed for at least 60 days at the time the vote is to be taken, (2) prohibits TWIA from buying reinsurance from any insurer or broker involved in executing catastrophe models that TWIA relies on in determining its probable maximum loss or in adopting rates, and (3) requires TDI to conform TWIA's plan of operation to these changes.

The new section is described in the following paragraphs.

Section 5.4702. New §5.4702 consists of subsections (a) - (c).

Subsection (a) states that the TWIA board of directors must comply with Insurance Code §2210.3512 in all votes on proposed rate filings.

Subsection (b) states that TWIA must comply with Insurance Code §2210.453(f) in all purchases of reinsurance under §2210.453.

Subsection (c) states that §5.4702 is part of TWIA's plan of operation.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed new section.

STATUTORY AUTHORITY. The Commissioner adopts new §5.4702 under HB 769 and Insurance Code §§2210.008, 2210.151, and 36.001.

HB 769, Section 4, states that TDI must amend TWIA's plan of operation to conform with the bill not later than the 60th day after the bill's effective date.

Insurance Code §2210.008 provides that the Commissioner may adopt rules as reasonable and necessary to implement Chapter 2210.

Insurance Code §2210.151 provides that the Commissioner adopt TWIA's plan of operation by rule.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202104298

James Person
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Effective date: November 14, 2021
Proposal publication date: August 27, 2021
For further information, please call: (512) 599-2127

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.3

The Texas Board of Criminal Justice (board) adopts amendments to §151.3, concerning the Operating Procedures for the Texas Board of Criminal Justice, without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5761). The rule will not be republished.

The adopted amendments allow meetings of the board to be held at a location in Texas as determined by the board Chairman.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.005-.007, which authorizes the organization of the board, establishes requirements of board meetings, and requires an opportunity for the public to appear before the board; §492.013, which authorizes the board to adopt rules; and §§551.001-.146, which establishes requirements for open meetings.

Cross Reference to Statutes: None.

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 November 1, 2021.

TRD-202104380
Kristen Worman
General Counsel
Texas Department of Criminal Justice
Effective date: November 21, 2021
Proposal publication date: September 10, 2021
For further information, please call: (936) 437-6700

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37 TAC §151.53

The Texas Board of Criminal Justice adopts new rule §151.53, Family Leave Pool, without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5762). The rule will not be republished.

The purpose of the new rule is to establish a family leave pool in compliance with House Bill 2063, 87th Leg., R.S.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; and §661.022, which requires the board to adopt rules and prescribe procedures relating to the operation of a family leave pool.

Cross Reference to Statutes: None.

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 November 1, 2021.

TRD-202104381
Kristen Worman
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Effective date: November 21, 2021
Proposal publication date: September 10, 2021
For further information, please call: (936) 437-6700

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37 TAC §151.55

The Texas Board of Criminal Justice adopts amendments to §151.55, concerning Disposal of Surplus Agricultural Goods and Agricultural Personal Property, without changes to the proposed text as published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4128). The rule will not be republished.

The adopted amendments are minor word changes, clarifications, and organizational changes.

No comments were received regarding the amendments.

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and §497.113, which authorizes the sale or disposal of surplus agricultural products and personal property owned by the department.

Cross Reference to Statutes: None.

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 November 1, 2021.

TRD-202104382
Kristen Worman
General Counsel
Texas Department of Criminal Justice
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Proposal publication date: July 9, 2021
For further information, please call: (936) 437-6700

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PART 16. TEXAS CIVIL COMMITMENT OFFICE

CHAPTER 810. CIVIL COMMITMENT

SUBCHAPTER A. CIVIL COMMITMENT GENERAL PROVISIONS

37 TAC §810.122

The Texas Civil Commitment Office (TCCO) adopts an amendment to §810.122 concerning Definitions. The amended section is adopted with minor formatting changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6205). The rule will be republished.

The amended section is adopted to revise the definition of "income" for purposes of cost recovery authorized by Section 841.084 of the Health and Safety Code as part of TCCO's administration and implementation of the tiered treatment program. The amended definition clarifies what constitutes "income" and lists certain benefits excluded from that definition.

During the 30-day comment period following publication in the *Texas Register,* no comments were received regarding the amendment, and no one appeared at the Board meeting on October 21, 2021, to offer comment. The format changes are the result of the Texas Secretary of State notifying TCCO of the preferred format for rules that contain a list of items after the proposed rule had been submitted for publication in the *Texas Register.*

The amended section is adopted under Health and Safety Code §841.141 which authorizes the adoption of rules to administer Chapter 841 and approved for publication in the *Texas Register.*

§810.122. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Health and Safety Code Chapter 841, Civil Commitment of Sexually Violent Predators.

(2) Case Management Team--All professionals involved in the assessment, treatment, supervision, monitoring, residential housing of the client, or other approved professionals. The case manager assigned by the office shall act as the chairperson of the team.

(3) Chemical Restraints--Chemical agents or inflammatory agents such as Oleoresin Capsicum (OC) or Orthochlorobenzalmalononitrile (CS) spray, that are designed to temporarily immobilize or incapacitate through temporary discomfort caused by the chemical action.

(4) Clinical Examiner--A person or persons employed by or under contract with the office to conduct a biennial examination to assess any change in the behavioral abnormality for a person committed under the Act, §841.081.

(5) Income--

(A) or the purpose of recovery of costs under §841.084 of the Act, income includes but is not limited to:

(i) money received from employment, to include wages, salaries, tips and other taxable employee pay;

(ii) disability benefits;

(iii) net earnings from self-employment;

(iv) net gain from the sale of property purchased while under civil commitment;

(v) net income from rental property or an ownership in an on-going business;

(vi) interest or dividend income; retirement income;

(vii) social security income;

(viii) unemployment benefits;

(ix) proceeds from lottery winnings; and

(x) gifts of cash.

(B) The following are excluded from Income:

(i) funds or property received from a judgment;

(ii) an inheritance;

(iii) funds or property received from a divorce decree;

(iv) insurance proceeds;

(v) transfers of funds from a spouse which shall not exceed $100.00 monthly; or

(vi) proceeds from the sale of property acquired prior to being civilly committed.

(6) Indigent--For the purpose of recovery of costs under § 841.084 of the Act, a sexually violent predator is considered to be indigent if the sexually violent predator does not have any income.

(7) Mechanical Restraints--Items such as handcuffs, cuff protectors, plastic cuffs (disposable type), leg irons, belly chains etc. and are designed to immobilize or incapacitate a client.

(8) Multidisciplinary Team (MDT)--Members of the Texas Civil Commitment Office (two), a licensed sex offender treatment provider from the Council on Sex Offender Treatment (one), Texas Department of Criminal Justice Rehabilitation Programs Division - sex offender rehabilitation program (one), Texas Department of Criminal Justice - Victim Service Division (one), a licensed peace officer employed by the Texas Department of Public Safety with at least five years' experience working for that department or the officer's designee (one), and a mental health professional from the Texas Department of State Health Services (one). The team assesses whether a person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release; gives notice of its findings to the Texas Department of Criminal Justice; and recommends that the person be assessed for a behavioral abnormality.

(9) Office--The Texas Civil Commitment Office (TCCO) including the Governing Board (Government Code Chapter 420A).

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 October 25, 2021.

TRD-202104306
Marsha McLane
Executive Director
Texas Civil Commitment Office
Effective date: November 14, 2021
Proposal publication date: September 17, 2021
For further information, please call: (512) 341-4421

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 364. REQUIREMENTS FOR LICENSURE

40 TAC §364.5

The Texas Board of Occupational Therapy Examiners adopts amendments to 40 TAC §364.5, concerning Recognition of Out-of-State License of Military Spouse. The amendments allow a military spouse to show proof of residency by submitting a permanent change of station order. The amendments also include adding that individuals update the Board of certain changes. The amendments are adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5377). The rule will not be republished.

House Bill 139 of the 87th Regular Legislative Session, codified as Texas Occupations Code §55.004(d), provides that: "A state agency that issues a license that has a residency requirement for license eligibility shall adopt rules regarding documentation necessary for a military spouse applicant to establish residency for purposes of this subsection, including by providing to the agency a copy of the permanent change of station order for the military service member to whom the spouse is married." The Bill took effect September 1, 2021. In accordance with HB 139, the amendment allows a permanent change of station order to serve as proof of residency for a military spouse requesting the authorization provided by the section.

An additional amendment concerns updating the Board of changes. Subsection (b)(2) of the section requires that a military spouse requesting the authorization submit proof of the military spouse's residency in this state and a copy of the military spouse's military identification card. The amendment adds the requirement that individuals who have received the authorization described by the section update the Board of any changes to information as specified under subsection (b)(2) within 30 days of such change(s). The change is adopted to enhance the Board's ability to remain apprised of changes to the information submitted for the authorization.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under chapter 454, and under Texas Occupations Code §55.0041, Recognition of Out-of-State License of Military Spouse, which requires to Board to adopt rules to implement the section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202104399

Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: December 1, 2021
Proposal publication date: August 27, 2021
For further information, please call: (512) 305-6900

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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) adopts amendments to §9.8 concerning Enhanced Contract and Performance Monitoring. The amendments to §9.8 are adopted without changes to the proposed text as published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 5001) and will not be republished.

EXPLANATION OF ADOPTED 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.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The rule is adopted 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.

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 October 28, 2021.

TRD-202104334
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: November 17, 2021
Proposal publication date: August 13, 2021
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SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

The Texas Department of Transportation (department) adopts 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. The amendments to §§9.31 - 9.35 and §§9.38 - 9.41 and the repeal of §9.36 and §9.37 are adopted without changes to the proposed text as published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 5003) and will not be republished.

EXPLANATION OF ADOPTED 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 replace 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.

COMMENTS

No comments on the proposed amendments and repeal were received.

43 TAC §§9.31 - 9.35, 9.38 - 9.41

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation 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.

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 October 28, 2021.

TRD-202104333
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: November 17, 2021
Proposal publication date: August 13, 2021
For further information, please call: (512) 463-8630

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43 TAC §9.36, §9.37

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation 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.

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 October 28, 2021.

TRD-202104332
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: November 17, 2021
Proposal publication date: August 13, 2021
For further information, please call: (512) 463-8630

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PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.41

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §217.41, concerning disabled person license plates and disabled parking placards that will be issued to disabled veterans. The amendments are necessary to implement new Transportation Code §504.202(b-1) and (b-2) and amendments to Transportation Code §504.202 and §681.004, related to the issuance and use of disabled person license plates and disabled parking placards as added by Senate Bill (SB) 792, 87th Legislature, Regular Session (2021). The department adopts the amendments to §217.41 with changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5167). The rule will be republished. The rule is adopted to be effective January 1, 2022.

REASONED JUSTIFICATION. Senate Bill 792 establishes requirements on access to disabled parking. The adopted amendments to §217.41 are necessary to implement SB 792.

Section 217.41(b)(1) is added to define the term "disabled person" and clarify that it includes veterans who qualify for a disabled person license plate under Transportation Code §504.202(b-1).

Section 217.41(b)(2) is amended to address the new processes that will apply to obtain disabled person license plates with the International Symbol of Access. Transportation Code §504.202(b-1) provides a qualifying disabled veteran the option to receive disabled person license plates with the International Symbol of Access if the disabled veteran is eligible to receive disabled person license plates under Transportation Code §504.201. Transportation Code §504.202(g) and §681.004(a)(3) requires a qualifying disabled veteran to elect to receive the disabled person license plates with the International Symbol of Access to obtain disabled parking placards. A qualifying disabled veteran is not required to accept a disabled person license plate displaying the International Symbol of Access; however, as stated in SECTION 8 and SECTION 9 of SB 792, beginning January 1, 2022, only vehicles displaying license plates bearing the International Symbol of Access or a disabled parking placard may lawfully park in disabled parking spaces under Transportation Code §§681.008, 681.009. and 681.011.

The statutory requirements for a disabled person under Transportation Code §504.201 differ from the requirements to qualify as a disabled veteran under Transportation Code §504.202. As such, it is possible that not all persons who qualify for a disabled veteran license plate will meet the requirement in Transportation Code §504.202(b-1) and be able to obtain license plates bearing the International Symbol of Access or disabled parking placards.

Section 217.41(b)(2)(A) is also amended to establish satisfactory proof of eligibility for an organization that under Transportation Code §504.202(c) transports disabled veterans who would qualify for license plates issued under Transportation Code §504.202(b-1), as required in Transportation Code §504.202(b-2). As amended, §217.41(b)(2)(A) includes the certification requirements in Transportation Code §504.202(d) and adds a requirement for the certifying authority, the veteran's county service officer of the county in which a vehicle described by Transportation Code §504.202(c) is registered or the Department of Veterans Affairs certify that the vehicle regularly transports veterans that would qualify for license plates under Transportation Code §504.202(b-1). The department considers that Transportation Code §504.202(b-2) requires transportation on a regular but not constant basis.

Section 217.41(b)(2)(B) and (C) are amended to recognize that a disabled veteran may qualify for certain military specialty license plates under §217.43. Also, the terms "Disabled Person" and "International Symbol of Access" are restated for consistent usage in the section.

Section 217.41(b)(3)(A) is amended to inform the reader of the Transportation Code sections that establish requirements for the issuance of disabled parking placards. Section 217.41(b)(3)(B) is amended to inform the reader of department rules that have provisions related to the renewal of regular, military, and specialty license plates. In response to a comment, the department has added §217.41(e)(B)(iii), which reads "The department will provide a form that persons may use to facilitate a transfer of disabled person license plates between vehicles." The change does not impose a new requirement or add costs not addressed in the proposal.

The department also adopts nonsubstantive changes for department style, including adding lead statements in §217.41(b)(2)(B) and (C); changing the term "Disabled Person" to "disabled person" throughout §217.41; and adding "tax assessor-collector" references to "county" in §217.41(d)(1)(B) and (e)(1)(B) for consistency with other references in the subsections. Finally, the department adopts as a nonsubstantive change that all references in the section to the parking placard be styled "disabled parking placard," for consistency with the terminology in Transportation Code §504.201 and §504.202, and Chapter 681.

Senate Bill 792 required the department to adopt rules by December 1, 2021. Because the amendments to §217.41 implement SB 792, the amended section cannot become effective until SB 792, which is January 1, 2022. As such, the amendments to §217.41 are adopted to be effective January 1, 2022.

SUMMARY OF COMMENTS.

The department received two written comments on the proposal from The Tax Assessor-Collectors Association of Texas (TACA), which represents all 254 county tax assessor-collectors in Texas.

Comment:

The commenter notes that the second sentence §217.41(e)(1)(A) appears to be duplicated in §217.41(e)(1)(B)(ii), with some slight differences. The commenter recommended that the duplicate statement be eliminated for clarity.

Agency Response:

The department agrees that both provisions require a person that sells or trades a vehicle with disabled person license plates to remove the license plates. However, each statement applies to a different circumstance: the transfer of license plates between persons and the transfer of license plates between vehicles. Because the proposal did not indicate the requirement was under review, the department declines to determine if, or which, statement is duplicate and remove it from the adopted text.

Comment:

The commenter recommends that §217.41 (e)(1)(B)(ii) include a requirement that Form VTR-420-UT must be used.

Agency Response:

The department agrees that transfer of a military specialty plate with a DV designation would currently involve VTR-420-UT. However, §217.41 is not limited to military plates or disabled veterans. While not contemplated at this time, the form and form number may change to better serve disabled persons in complying with this rule. For these reasons, the department declines to refer to the form by number but has added a statement that "The department will provide a form that persons may use to facilitate a transfer of disabled person license plates between vehicles." The change does not impose a new requirement or add costs not addressed in the proposal.

STATUTORY AUTHORITY. The department adopts amendments to §217.41 under Transportation Code §§504.202, 504.0011, and 1002.001.

- Transportation Code §504.202(b-2) requires the department to adopt rules prescribing satisfactory proof of eligibility for an organization that registers a motor vehicle under Transportation Code §504.202(c) to receive license plates under Transportation Code §504.202(b-1) if the vehicle regularly transports veterans who are eligible to receive license plates under Subsection (b-1).

- Transportation Code §504.0011 authorizes the board to adopt rules to implement and administer Transportation Code Chapter 504.

- Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§502.410, 504.201, 504.202, 681.004, 681.008, 681.009, and 681.011.

§217.41. Disabled Person License Plates and Disabled Parking Placards.

(a) Purpose. Transportation Code, Chapters 504 and 681, charge the department with the responsibility for issuing specially designed license plates and disabled parking placards for disabled persons. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of disabled person license plates and disabled parking placards.

(b) Issuance.

(1) For purposes of this section, "disabled person" means a person eligible for issuance of a license plate bearing the International Symbol of Access under Transportation Code §504.201, including a qualifying disabled veteran under §504.202(b-1).

(2) Disabled person license plates.

(A) Eligibility. In accordance with Transportation Code §504.201 and §504.202(b-1) and (b-2), the department will issue specially designed license plates displaying the International Symbol of Access to permanently disabled persons or their transporters instead of regular motor vehicle license plates. As satisfactory proof of eligibility, an organization that transports disabled veterans who would qualify for license plates issued under Transportation Code §504.202(b-1) must provide a written statement from the veteran's county service officer of the county in which a vehicle described by Transportation Code §504.202(c) is registered or by the Department of Veterans Affairs that:

(i) the vehicle is used exclusively to transport veterans of the United States armed forces who have suffered, as a result of military service, a service-connected disability;

(ii) the vehicle regularly transports veterans who are eligible to receive license plates under Subsection (b-1); and

(iii) the veterans are not charged for the transportation.

(B) Specialty license plates. The department will issue disabled person specialty license plates displaying the International Symbol of Access that can accommodate the identifying insignia and that are issued in accordance with §217.43 or §217.45 of this title.

(C) License plate number. Disabled person license plates will bear a license plate number assigned by the department or will bear a personalized license plate number issued in accordance with §217.43 or §217.45 of this title.

(3) Windshield disabled parking placards.

(A) Issuance. The department will issue removable windshield disabled parking placards to temporarily or permanently disabled persons and to the transporters of permanently disabled persons, as provided under Transportation Code §§504.201, 504.202, and 681.004.

(B) Display. A person who has been issued a windshield disabled parking placard shall hang the placard from a vehicle's rearview mirror when the vehicle is parked in a disabled person parking space or shall display the placard on the center portion of the dashboard if the vehicle does not have a rearview mirror.

(c) Renewal of disabled person license plates. Disabled person license plates are valid for a period of 12 months from the date of issuance and are renewable as specified in §§217.28, 217.43, and 217.45 of this title.

(d) Replacement.

(1) License plates. If a disabled person metal license plate is lost, stolen, or mutilated, the owner may obtain a replacement metal license plate by applying with a county tax assessor-collector.

(A) Accompanying documentation. To replace disabled person metal license plates, the owner must present the current year's registration receipt and personal identification acceptable to the county tax assessor-collector.

(B) Absence of accompanying documentation. If the current year's registration receipt is not available and the county tax assessor-collector cannot verify that the disabled person metal license plates were issued to the owner, the owner must reapply in accordance with this section.

(2) Disabled parking placards. If a disabled parking placard becomes lost, stolen, or mutilated, the owner may obtain a new disabled parking placard in accordance with this section.

(e) Transfer of disabled person license plates and disabled parking placards.

(1) License plates.

(A) Transfer between persons. Disabled person license plates may not be transferred between persons. An owner who sells or trades a vehicle to which disabled person license plates have been issued shall remove the disabled person license plates from the vehicle. The owner shall return the license plates to the department and shall obtain appropriate replacement license plates to place on the vehicle prior to any transfer of ownership.

(B) Transfer between vehicles. Disabled person license plates may be transferred between vehicles if the county tax assessor-collector or the department can verify the plate ownership and the

owner of the vehicle is a disabled person or the vehicle is used to transport a disabled person.

(i) Plate ownership verification may include:

(I) a Registration and Title System (RTS) inquiry;

(II) a copy of the department application for disabled person license plates; or

(III) the owner's current registration receipt.

(ii) An owner who sells or trades a vehicle with disabled person license plates must remove the plates from the vehicle.

(iii) The department will provide a form that persons may use to facilitate a transfer of disabled person license plates between vehicles.

(2) Disabled parking placards.

(A) Transfer between vehicles. Disabled parking placards may be displayed in any vehicle driven by the disabled person or in which the disabled person is a passenger.

(B) Transfer between persons. Disabled parking placards may not be transferred between persons.

(f) Seizure and revocation of disabled parking placard.

(1) If a law enforcement officer seizes and destroys a disabled parking placard under Transportation Code §681.012, the officer shall notify the department by email.

(2) The person to whom the seized disabled parking placard was issued may apply for a new disabled parking placard by submitting an application to the county tax assessor-collector of the county in which the person with the disability resides or in which the applicant is seeking medical treatment.

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 November 1, 2021.

TRD-202104379
Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Effective date: January 1, 2022
Proposal publication date: August 20, 2021
For further information, please call: (512) 465-5665

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

Department of Information Resources

Title 1, Part 10

The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 1, Chapter 201, §§201.1 - 201.9, General Administration. The review and consideration of the rules are conducted in accordance with Texas Government Code § 2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Christi Koenig Brisky, Assistant General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759, or via electronic mail to rule.review@dir.texas.gov. The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register*. Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rule by DIR in accordance with the requirements of the Texas Administrative Procedure Act, Texas Government Code Chapter 2001.

TRD-202104351
Kaherine Rozier Fite
General Counsel
Department of Information Resources
Filed: October 28, 2021

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The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 1, Chapter 207, §§207.1 - 207.4, 207.10 - 207.14, and 207.30 - 207.32, Telecommunications Services. The review and consideration of the rules are conducted in accordance with Texas Government Code §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Christi Koenig Brisky, Assistant General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759, or via electronic mail to rule.review@dir.texas.gov. The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register*. Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rule by DIR in accordance with the requirements of the Texas Administrative Procedure Act, Texas Government Code Chapter 2001.

TRD-202104353
Katherine Rozier Fite
General Counsel
Department of Information Resources
Filed: October 28, 2021

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The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 1, Chapter 210, §§210.1 - 210.3, 210.30 - 210.36, and 210.54, State Electronic Internet Portal. The review and consideration of the rules are conducted in accordance with Texas Government Code §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Christi Koenig Brisky, Assistant General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759, or via electronic mail to rule.review@dir.texas.gov. The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register*. Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rule by DIR in accordance with the requirements of the Texas Administrative Procedure Act, Texas Government Code Chapter 2001.

TRD-202104354
Katherine Rozier Fite
General Counsel
Department of Information Resources
Filed: October 28, 2021

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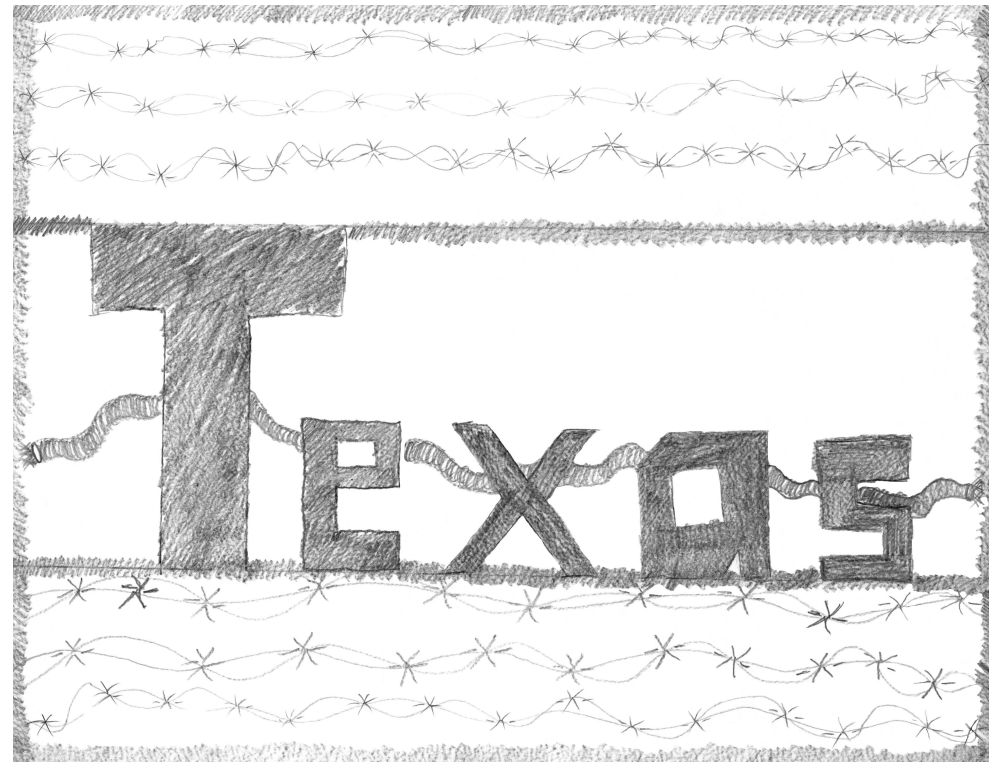
TEXAS

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.

State Auditor's Office

Request for Proposal for the Federal Portion of the Texas Statewide Single Audit

The State Auditor's Office (SAO) invites proposals for auditing services for the purposes of performing the federal portion of the Texas Statewide Single Audit (Single Audit). Although the services described in this request comprise the full extent of the services for which the SAO may contract, the SAO will consider proposals that include any portion or combination of services included in this request. Additional information regarding the solicitation and instructions for submitting a proposal can be found via the following link - http://www.txsmartbuy.com/esbddetails/view/308-22-2405.

TRD-202104424
Lisa R. Collier
State Auditor
Stater Auditor's Office
Filed: November 3, 2021

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Capital Area Rural Transportation System

Request for Proposal - Acquisition and Deployment of Door and Gate Access Control Technology RFP-2021-137-AC

Capital Area Rural Transportation System (CARTS) is soliciting proposals the completion of a project for Access Control acquisition and deployment at ten (10) transit stations in its District.

Beginning at 5:00 p.m., Thursday, November 9, 2021, the RFP will be available in digital format on our website at http://www.ridecarts.com/about/procurement

Procurement Time Frame

Release of RFP - November 9, 2021

Pre-Proposal Meeting - November 23, 2021

Written Questions Due - November 30, 2021*

Responses Provided - December 7, 2021

Proposals Due - December 14, 2021

Work Begins - January 3, 2022

Projected Work Completion - May 31, 2022

TRD-202104390
Dave Marsh
CARTS, General Manager
Capital Area Rural Transportation System
Filed: November 1, 2021

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RFP for Project "Connecting People and Communities in the CARTS District"

Transportation Development Plan - Request for Proposals

Capital Area Rural Transportation System (CARTS) is soliciting proposals for a Transportation Development Plan for the Project *"Connecting People and Communities in the CARTS District."*

Beginning at 5:00 p.m., Thursday, November 18, 2021, the RFP will be available in digital format on our website at http://www.ridecarts.com/about/procurement.

The schedule is:

Release of RFP -- November 18, 2021

Pre-proposal Meeting -- December 8, 2021, 2:00 p.m. CDST

Responses due at 2:00 p.m. -- January 7, 2022

Interviews (if necessary) -- January 18, 2022

Award Anticipated -- February 1, 2022

Work Begins -- March 1, 2022

Final Report & Board Meeting -- September 29, 2022

Proposals will be evaluated on qualifications, management approach/experience, scope of work and the completeness and quality of submittal.

TRD-202104331
David Marsh
General Manager
Capital Area Rural Transportation System
Filed: October 28, 2021

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/08/21 - 11/14/21 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 11/08/21 - 11/14/21 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 11/01/21 - 11/30/21 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 11/01/21 - 11/30/21 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-202104413

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 2, 2021

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 15, 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 **December 15, 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: Acton Municipal Utility District; DOCKET NUMBER: 2020-0899-MWD-E; IDENTIFIER: RN102806155; LOCATION: Granbury, 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 WQ0014212001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: $7,187; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,750; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: CAMP OLYMPIA INC; DOCKET NUMBER: 2020-0969-MWD-E; IDENTIFIER: RN101515435; LOCATION: Trinity, Trinity 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 (TPDES) Permit Number WQ0014261001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0014261001, Sludge Provisions, Section IV.C, by failing to submit a complete annual sludge report to the TCEQ by September 30th of each year; PENALTY: $5,500; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: City of Trinity; DOCKET NUMBER: 2019-0041-MWD-E; IDENTIFIER: RN101607182; LOCATION: Trinity, Trinity County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010617001, Monitoring and Reporting Requirements Number 7.b.i, by failing to report an unauthorized discharge orally to the Regional Office within 24 hours of becoming aware of the noncompliance, and in writing to the Regional Office and Enforcement Division within five working days of becoming aware of the noncompliance; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010617001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010617001, Permit Conditions Number 2(d) and Operational Requirements Number 1, by failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment; 30 TAC §305.125(1) and (5), and TPDES Permit Number WQ0010617001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; and 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010617001, Permit Condition Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: $50,312; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $50,312; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Hidden Oaks Rockport LLC; DOCKET NUMBER: 2021-0500-PWS-E; IDENTIFIER: RN105767347; LOCATION: Rockport, Aransas County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(O), by failing to protect all well units with an intruder-resistant fence with a lockable gate or enclose the well in a locked and ventilated well house to exclude possible contamination or damage to the facilities by trespassers; 30 TAC §290.45(c)(1)(A)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide the minimum well capacity; 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (ii)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's three pressure tanks annually; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an accurate and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $10,967; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(5) COMPANY: JB Homes Incorporated; DOCKET NUMBER: 2021-1312-WQ-E; IDENTIFIER: RN111305850; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: operator; RULE

VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Lubbock County Water Control and Improvement District Number 1; DOCKET NUMBER: 2021-0615-MLM-E; IDENTIFIER: RN101411908; LOCATION: Buffalo Springs, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §288.20(a) and §288.30(5)(B), and TWC, §11.1272(c), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.44(d)(2), by failing to provide increased pressure by means of booster pumps taking suction from ground storage tanks or obtain an exception by acquiring plan approval from the executive director (ED) for a booster pump taking suction from the distribution lines; 30 TAC §290.46(f)(2) and (3)(B)(ix), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request, and nitrate monitoring results were missing for 2018 and 2021 and only partial records were available for 2019 and 2020; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulation, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous water service to new construction or any existing construction when the water purveyor has reason to believe a cross-connection or other potential contamination hazard exists; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(s)(2)(D), by failing to verify the accuracy of the analyzer used to determine the effectiveness of chloramination in accordance with the manufacturer's recommendations every 90 days; 30 TAC §290.46(z), by failing to create a nitrification action plan for all systems distributing chlorminated water; and 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: $4,120; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(7) COMPANY: Motiva Chemicals LLC; DOCKET NUMBER: 2021-0279-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 16989 and PSDTX794, Special Conditions Number 1, Federal Operating Permit Number O1317, General Terms and Conditions and Special Terms and Conditions Number 23, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $2,850; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: Royal Crest Custom Homes Ltd; DOCKET NUMBER: 2021-1366-WQ-E; IDENTIFIER: RN109835215; LOCATION: Northlake, Denton County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Tenaska Gateway Partners, LTD.; DOCKET NUMBER: 2018-1009-AIR-E; IDENTIFIER: RN101514214; LOCATION: Long Branch, Rusk County; TYPE OF FACILITY: electric power generation; RULES VIOLATED: 30 TAC §106.263(d)(1) and §122.143(4), Federal Operating Permit (FOP) Number O1883, General Terms and Conditions (GTC) and Special Terms and Conditions Numbers 8 and 9, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the 24-hour emissions totals limit for individual occurrences; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1883, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $94,251; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202104403
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: November 2, 2021

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Enforcement Orders

A default order was adopted regarding Quadvest Construction, L.P., Docket No. 2018-1108-WQ-E on November 3, 2021, assessing $3,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John Merculief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding AMR Food, Inc. dba STOP N GET, Docket No. 2018-1720-PST-E on November 3, 2021, assessing $5,568 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Galveston, Docket No. 2019-0861-MWD-E on November 3, 2021, assessing $29,326 in administrative penalties with $5,865 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Realty Income Properties 22, LLC, Docket No. 2019-1108-PWS-E on November 3, 2021, assessing $385 in administrative penalties with $330 deferred. Information concerning any aspect of this order may be obtained by contacting Benjamin Warms, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MCP 100 Congress Member, LLC, Docket No. 2019-1356-WQ-E on November 3, 2021, assessing $9,000 in administrative penalties with $1,800 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding AK CUSTOM HOMES LLC, Docket No. 2020-0187-WQ-E on November 3, 2021, assessing $3,900 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Casey Kurnath, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Arnoldo Perez formerly dba Perez Fuel Stop, Docket No. 2020-0502-PST-E on November 3, 2021, assessing $6,562 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Judy Bohr, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding John Vasquez, Docket No. 2020-0641-PST-E on November 3, 2021, assessing $6,626 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Casey Kurnath, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DERICHEBOURG RECYCLING USA, INC., Docket No. 2020-0713-WQ-E on November 3, 2021, assessing $8,544 in administrative penalties with $1,708 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Navasota, Docket No. 2020-0745-MWD-E on November 3, 2021, assessing $24,375 in administrative penalties with $4,875 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Gorman, Docket No. 2020-1116-PWS-E on November 3, 2021, assessing $1,177 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Navarro Midstream Services, LLC, Docket No. 2020-1238-AIR-E on November 3, 2021, assessing $7,650 in administrative penalties with $1,530 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding XTO Energy Inc., Docket No. 2021-0006-AIR-E on November 3, 2021, assessing $52,375 in administrative penalties with $10,475 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SI Group, Inc., Docket No. 2021-0008-AIR-E on November 3, 2021, assessing $18,675 in administrative penalties with $3,735 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PCI Nitrogen, LLC, Docket No. 2021-0010-AIR-E on November 3, 2021, assessing $15,438 in administrative penalties with $3,087 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PAWLIK'S SUPER MARKET, INC. dba Pawlik Ace Mart, Docket No. 2021-0028-PST-E on November 3, 2021, assessing $7,780 in administrative penalties with $1,556 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Gregory, Docket No. 2021-0150-MWD-E on November 3, 2021, assessing $7,812 in administrative penalties with $1,562 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Christian Life Center of Lubbock, Docket No. 2021-0156-PWS-E on November 3, 2021, assessing $1,177 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Dallas, Docket No. 2021-0164-MWD-E on November 3, 2021, assessing $13,125 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Toyah, Docket No. 2020-1352-PWS-E on November 3, 2021, assessing $3,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KBB & KBB, INC dba Crossroads Conoco, Docket No. 2020-0305-PST-E on November 3, 2021, assessing $20,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202104427
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 3, 2021

Enforcement Orders

An agreed order was adopted regarding MEHAT ENTERPRISES, INCORPORATED dba PDQ Fast Stop, Docket No. 2018-1593-PST-E on November 2, 2021, assessing $4,627 in administrative penalties with $925 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Thomas Petroleum, LLC dba THOMAS PETROLEUM SAN ANTONIO, Docket No. 2019-1442-PST-E on November 2, 2021, assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Robert Burk, Docket No. 2019-1565-PST-E on November 2, 2021, assessing $1,634 in administrative penalties. Information concerning any aspect of this order

may be obtained by contacting Casey Kurnath, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BlueLinx Corporation, Docket No. 2020-0044-PST-E on November 2, 2021, assessing $6,646 in administrative penalties with $1,329 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pamela Trahan, Docket No. 2020-0162-PST-E on November 2, 2021, assessing $5,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ALCAPA Real Estate Holdings, LLC; Teresa Albright; and Milton Shaw, Docket No. 2020-0731-WR-E on November 2, 2021, assessing $1,500 in administrative penalties with $300 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Burleson Sand LLC, Docket No. 2020-0870-WQ-E on November 2, 2021, assessing $1,000 in administrative penalties with $200 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Hutto, Docket No. 2020-1086-WQ-E on November 2, 2021, assessing $6,250 in administrative penalties with $1,250 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DCP Operating Company, LP, Docket No. 2020-1105-AIR-E on November 2, 2021, assessing $6,412 in administrative penalties with $1,282 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Azteca Milling, L.P., Docket No. 2020-1227-PWS-E on November 2, 2021, assessing $6,176 in administrative penalties with $1,235 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Matthews, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding XPO Logistics Freight, Inc., Docket No. 2020-1248-PST-E on November 2, 2021, assessing $3,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NASA OIL, INC. dba Nasa Food Mart, Docket No. 2020-1292-PST-E on November 2, 2021, assessing $5,201 in administrative penalties with $1,040 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Suva Kamana Investment LLC dba Kilgore Grab-N-Go, Docket No. 2020-1327-PST-E on November 2, 2021, assessing $6,300 in administrative penalties with $1,260 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Reno, Docket No. 2020-1344-WQ-E on November 2, 2021, assessing $938 in administrative penalties with $187 deferred. Information concerning any aspect of this order may be obtained by contacting Alyssa Loveday, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Coca-Cola Southwest Beverages LLC, Docket No. 2020-1371-AIR-E on November 2, 2021, assessing $6,663 in administrative penalties with $1,332 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Department of Transportation, Docket No. 2020-1380-MSW-E on November 2, 2021, assessing $1,187 in administrative penalties with $237 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Roma, Docket No. 2020-1395-MWD-E on November 2, 2021, assessing $3,188 in administrative penalties with $637 deferred. Information concerning any aspect of this order may be obtained by contacting Alyssa Loveday, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2020-1434-PWS-E on November 2, 2021, assessing $6,160 in administrative penalties with $1,232 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Meister Sealcoat & Supplies, LLC, Docket No. 2020-1441-IHW-E on November 2, 2021, assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding T & A DALLAS LLC dba Fina Food Mart 1, Docket No. 2020-1447-PST-E on November 2, 2021, assessing $6,375 in administrative penalties with $1,275 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ALAMO CONCRETE PRODUCTS COMPANY, Docket No. 2020-1462-EAQ-E on November 2, 2021, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CALLAHAN COUNTY FARMERS COOPERATIVE, INC., Docket No. 2020-1607-PST-E on November 2, 2021, assessing $6,600 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Judy Bohr, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ETC Texas Pipeline, Ltd. fka ETC Field Services LLC, Docket No. 2021-0124-AIR-E on November 2, 2021, assessing $1,500 in administrative penalties with $300 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Indorama Ventures Oxides LLC, Docket No. 2021-0126-AIR-E on November 2, 2021, assessing $4,463 in administrative penalties with $892 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Rhome, Docket No. 2021-0141-PWS-E on November 2, 2021, assessing $305 in administrative penalties with $61 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lone Star NGL Fractionators LLC, Docket No. 2021-0145-AIR-E on November 2, 2021, assessing $938 in administrative penalties with $187 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mutual First, LLC, Docket No. 2021-0148-MSW-E on November 2, 2021, assessing $6,000 in administrative penalties with $1,200 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Town of San Felipe, Docket No. 2021-0151-MLM-E on November 2, 2021, assessing $2,625 in administrative penalties with $525 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DHILLON INVESTMENT GROUP, INC dba Cardinal Quick Stop, Docket No. 2021-0157-PST-E on November 2, 2021, assessing $2,562 in administrative penalties with $512 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Webb & Webb Construction, LLC, Docket No. 2021-0172-AIR-E on November 2, 2021, assessing $1,125 in administrative penalties with $225 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field Citation was adopted regarding William M Bray, Docket No. 2021-0173-WOC-E on November 2, 2021, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Quail Creek Municipal Utility District, Docket No. 2021-0180-PWS-E on November 2, 2021, assessing $1,529 in administrative penalties with $887 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tri-Star Retails, Inc. dba On the Go 5, Docket No. 2021-0183-PST-E on November 2, 2021, assessing $6,750 in administrative penalties with $1,350 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SNOW WATER VENTURES INC dba Scooters Triple C Convenience Store, Docket No. 2021-0192-PST-E on November 2, 2021, assessing $4,625 in administrative penalties with $925 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Himchuli Corporation dba Quick Stop, Docket No. 2021-0195-PST-E on November 2, 2021, assessing $6,115 in administrative penalties with $1,223 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MARQUEZ ENTERPRISES, LLC dba Grubs Market 2, Docket No. 2021-0211-PST-E on November 2, 2021, assessing $7,099 in administrative penalties with $1,419 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NEW STEP IN USA INC dba One Stop FFP 3230, Docket No. 2021-0261-PST-E on November 2, 2021, assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Laredo, Docket No. 2021-0293-PWS-E on November 2, 2021, assessing $5,662 in administrative penalties with $1,132 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MICRO STAR, INC. dba Power Mart 3, Docket No. 2021-0302-PST-E on November 2, 2021, assessing $1,927 in administrative penalties with $385 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fairview Gardens Developments, LLC, Docket No. 2021-0305-PWS-E on November 2, 2021, assessing $250 in administrative penalties with $50 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202104429
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 3, 2021

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Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 166790

APPLICATION. Tex-Mix Partners, Ltd., P.O. Box 830, Leander, Texas 78646-0830 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 166790 to authorize the operation of two permanent concrete batch plants with enhanced controls. The facility is proposed to be located at 105 Flying B Ranch Road, Bertram, Burnet County, Texas 78605. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.729166&lng=-98&zoom=13&type=r. This application was submitted to the TCEQ on October 14, 2021. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on October 26, 2021.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding. The Public Hearing is to be held:**

Tuesday, December 14, 2021, at 6:00 p.m.

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 332-709-771. It is recommended that you join the webinar and register for the public hearing at least 15 minutes before the hearing begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access must call (512) 239-1201 at least one day prior to the hearing to register for the meeting and to obtain information for participating telephonically. Members of the public who wish to only listen to the hearing may call, toll free, (562) 247-8422 and enter access code 592-519-712.

Additional information will be available on the agency calendar of events at the following link: https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Tex-Mix Partners, Ltd., P.O. Box 830, Leander, Texas 78646-0830, or by calling Mr. Aaron Dalton, Project Engineer at (512) 759-1438.

Notice Issuance Date: October 26, 2021

TRD-202104368
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 29, 2021

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Notice of District Petition

Notice issued October 27, 2021

TCEQ Internal Control No. D-05052021-006; TPHTL Rogers, LLC, a Delaware limited liability company submitted a petition for creation of Fort Bend County Municipal Utility District No. 175 (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 in the proposed District and is the owner of a majority in value of the Land; (2) there are no lienholders on the prop-

erty to be included in the proposed District; (3) the proposed District will contain approximately 296.0797 acres located within Fort Bend County, Texas; and (4) all of the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of Fulshear, Texas. The revised petition further states that the general nature of the work proposed to be done by the District, as contemplated at the present time, is to: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend additional facilities including roads, parks, and recreational facilities, systems, plants, and enterprises as shall be consistent with all the purposes for which the 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, from the information available at this time, that the cost of said project will be approximately $62,502,000 ($40,692,000 for water, wastewater, and drainage facilities, $19,000,000 for roads, and $2,810,000 for recreational facilities).

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 website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202104325

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 27, 2021

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Notice of Hearing on City of Granbury: SOAH Docket No. 582-22-0585; TCEQ Docket No. 2021-1001-MWD; Permit No. WQ0015821001

APPLICATION.

City of Granbury, P.O. Box 969, Granbury, Texas 76048, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015821001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day.

The facility will be located at 3121 Old Granbury Road, Granbury, in Hood County, Texas 76049. The treated effluent will be discharged to an unnamed tributary of Rucker Creek; thence to Rucker Creek; thence to Lake Granbury in Segment No. 1205 of the Brazos River Basin. The unclassified receiving water uses are limited aquatic life use for unnamed tributary of Rucker Creek, and high aquatic life use for Rucker Creek. The designated uses for Segment No. 1205 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code (TAC) §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, 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. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Rucker Creek or Lake Granbury, which have been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.739444%2C32.452777&level=12. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, 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. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Granbury City Hall, 116 West Bridge Street, Granbury, Texas.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - December 13, 2021

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 586 6360

Password: 0584pre

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 586 6360

Password: 5612997

Visit the SOAH website for registration at: http://www.soah.texas.gov/

or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on September 29, 2021. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

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."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

Further information may also be obtained from the City of Granbury at the address stated above or by calling Mr. Rick Crownover at (817) 573-7030, Ext. 1699.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: October 29, 2021

TRD-202104370
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 29, 2021

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Notice of Hearing on Lampasas Trucking and Redi-Mix, LLC: SOAH Docket No. 582-22-0584; TCEQ Docket No. 2021-0998-AIR; Registration No. 162529

APPLICATION.

Lampasas Trucking and Redi-Mix, LLC has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 162529, which would authorize construction of a permanent concrete batch plant located at 2605 Morris Sheppard Drive, Brownwood, Brown County, Texas 76801. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-98.989068%2C31.674262&level=12. For the exact location, refer to the application. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less. This application was submitted to the TCEQ on August 26, 2020.

The TCEQ Executive Director has determined that the application meets all of the requirements of a standard permit authorized by 30 Texas Administrative Code (TAC) §116.611, which would establish the conditions under which the plant must operate. The Executive Director has made a preliminary decision to issue the registration because it meets all applicable rules. The application, executive director's preliminary decision, and standard permit are available for viewing and copying at the TCEQ central office, the TCEQ Abilene regional office, and at the Brownwood Public Library, 600 Carnegie Street, Brownwood, Texas 76801, Brown County. The facility's compliance file, if any exists, is available for public review at the TCEQ Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas. Visit http://www.tceq.texas.gov/goto/cbp to review the standard permit.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - December 9, 2021

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 045 6396

Password: Ff3N6c

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 045 6396

Password: 440501

Visit the SOAH website for registration at: http://www.soah.texas.gov/

or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on September 29, 2021. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 TAC Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

MAILING LIST.

You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION.

Public comments and requests must be submitted either electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html, 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. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information regarding the TCEQ may be obtained electronically at www.tceq.texas.gov

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."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information regarding the TCEQ can be found at www.tceq.texas.gov.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Further information may also be obtained from Lampasas Trucking and Redi-Mix, LLC, 1550 North US Highway 281, Lampasas, Texas 76550-1174 or by calling Ms. Monique Wells, Environmental Consultant, CIC Environmental, LLC at (512) 292-4314.

Issued: October 29, 2021

TRD-202104371
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 29, 2021

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 15, 2021.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 15, 2021.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: City of Scottsville; DOCKET NUMBER: 2019-0314-PWS-E; TCEQ ID NUMBER: RN101227619; LOCATION: approximately 1,263 feet south of the intersection of Farm-to-Market Road 1998 and Farm-to-Market Road 2199 on Farm-to-Market Road 2199, Scottsville, Harrison County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) by the tenth day of the month following the end of each quarter; 30 TAC §290.117(c)(2)(C), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper lead and copper tap samples; 30 TAC §290.117(c)(2)(B), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed and report the results to the executive director; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR to the ED by the tenth day of the month following the end of each quarter; PENALTY: $880; STAFF ATTORNEY: Ben Warms, Litigation, MC 175, (512) 239-5144; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: City of Scottsville; DOCKET NUMBER: 2019-0677-PWS-E; TCEQ ID NUMBER: RN101227619; LOCATION: Farm-to-Market Road 2199 off United States Highway 80, Scottsville, Harrison County; TYPE OF FACILITY: public water supply; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.0351 and 30 TAC §290.39(j), by failing to notify the executive director and receive an approval prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.46(m)(1)(B), by failing to inspect the interior of the facility's pressure tank at least once every five years; 30

TAC §290.46(f)(2) and (3)(A)(i)(II), (iii), (iv), (vi), (B)(ii) and (iii); 30 TAC §290.110(d)(1), by failing to measure the free chlorine residual to minimum accuracy of plus or minus 0.1 milligrams per liter; 30 TAC §290.121(a) and (b), by failing to maintain an accurate and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifications; 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national code; 30 TAC §290.42(e)(4)(B), by failing to house the gas chlorine equipment and cylinders of chlorine in separate buildings or separate rooms with impervious walls or partitions separating all mechanical and electrical equipment from the chlorine facilities; THSC, §341.0315(c) and 30 TAC §290.45(b)(1)(C)(iii), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; and 30 TAC §290.44(h)(1)(A), by failing to ensure additional protection was provided at all residences or establishments where an actual or potential contamination hazard exists in the form of an air gap or a backflow prevention assembly as identified in 30 TAC §290.47(f); PENALTY: $1,255; STAFF ATTORNEY: Ben Warms, Litigation, MC 175, (512) 239-5144; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202104404
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: November 2, 2021

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 15, 2021.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 15, 2021.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Alfonso Trevino; DOCKET NUMBER: 2020-1591-MSW-E; TCEQ ID NUMBER: RN110856754; LOCATION: 272 South Farm-to-Market 1557, Asherton, Dimmit County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: $3,750; STAFF ATTORNEY: Roslyn Dubberstein, Litigation, MC 175, (512) 239-0683; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(2) COMPANY: City of Thornton; DOCKET NUMBER: 2020-1408-MWD-E; TCEQ ID NUMBER: RN102844461; LOCATION: approximately 0.5 miles south of the intersection of State Highway 14 and Farm-to-Market Road 1246, Limestone, Limestone County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010824001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $4,000; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Dario Jaime Gonzalez dba Dario's Tire Shop; DOCKET NUMBER: 2018-0832-MSW-E; TCEQ ID NUMBERS: RN110294444 (Site 1); RN110393667 (Site 2); LOCATIONS: 5003 North Farm-to-Market Road 88, Weslaco, Hidalgo County (Site 1); 917 South Alamo Road, Alamo, Hidalgo County (Site 2); TYPE OF FACILITY: tire shop; RULES VIOLATED: Texas Health and Safety Code (THSC), §36.112(a) and 30 TAC §328.60(a), by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers; THSC, §361.112(a) and 30 TAC §328.56(a)(1), by failing to obtain a scrap tire generator registration prior to storing more than 500 tires at the facility; 30 TAC §328.63(c), by failing to obtain a scrap tire registration for the facility prior to processing tires on-site; 30 TAC §328.56(d)(4), by failing to monitor tires stored outside for vectors and utilize appropriate vector control measures at least once every two weeks; and 30 TAC §328.58(a), by failing to maintain a record of each individual load of used or scrap tires or tire pieces transported from the facility; PENALTY: $22,500; STAFF ATTORNEY: Roslyn Dubberstein, Litigation, MC 175, (512) 239-0683; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-202104405
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: November 2, 2021

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of FORMOSA UTILITY VENTURE, LTD. and FORMOSA PLASTICS CORPORATION, TEXAS: SOAH Docket No. 582-22-0397; TCEQ Docket No. 2019-0623-IWD-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - December 2, 2021

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 657 9330

Password: Dec02TCEQ

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252 or (646) 828-7666

Meeting ID: 161 657 9330

Password: 476524996

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed June 24, 2021, concerning assessing administrative penalties against and requiring certain actions of FORMOSA UTILITY VENTURE, LTD. and FORMOSA PLASTICS CORPORATION, TEXAS, for violations in Calhoun County, Texas, of: Texas Water Code §26.121(a)(1); 30 Texas Administrative Code §305.125(1); and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002436000, Effluent Limitations and Monitoring Requirements Nos. 1 (Outfall Nos. 001, 101, and SUM) and 3 (Outfall Nos. 001, 004, 005, 006, 007, 008, and 009).

The hearing will allow FORMOSA UTILITY VENTURE, LTD. and FORMOSA PLASTICS CORPORATION, TEXAS, 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 FORMOSA UTILITY VENTURE, LTD. and FORMOSA PLASTICS CORPORATION, TEXAS, 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 FORMOSA UTILITY VENTURE, LTD. and FORMOSA PLASTICS CORPORATION, TEXAS 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.** FORMOSA UTILITY VENTURE, LTD. and FORMOSA PLASTICS CORPORATION, TEXAS, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054, Texas Water Code chs. 7 and 26, and 30 Texas Administrative Code chs. 70 and 305; Texas 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 Clayton Smith, 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: November 2, 2021

TRD-202104421
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 3, 2021

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Ronald Dean Wall, Executor of the Leamon Wall Estate: SOAH Docket No. 582-22-0395; TCEQ Docket No. 2019-0675-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 at:

10:00 a.m. - December 2, 2021

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 657 9330

Password: Dec02TCEQ

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252 or (646) 828-7666

Meeting ID: 161 657 9330

Password: 476524996

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed January 28, 2020, concerning assessing administrative penalties against and requiring certain actions of Ronald Dean Wall, Executor of the Leamon Wall Estate, for violations in Bell County, Texas, of: 30 Texas Administrative Code §330.15(a) and (c).

The hearing will allow Ronald Dean Wall, Executor of the Leamon Wall Estate, 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 Ronald Dean Wall, Executor of the Leamon Wall Estate, 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** Ronald Dean Wall, Executor of the Leamon Wall Estate **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.** Ronald Dean Wall, Executor of the Leamon Wall Estate, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and ch. 7, Texas Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 330; Texas 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 John S. Merculief II, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: November 2, 2021

TRD-202104422
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 3, 2021

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Notice of Water Quality Application

The following notice was issued on October 22, 2021.

The following notices do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, has applied to the Texas Commission on Environmental Quality (TCEQ) for a minor amendment to the TCEQ permit to authorize changing the public access pastureland land disposal area for this facility to non-public access and to remove the chlorine effluent limits requirement in the permit. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 7,311 gallons per day via surface irrigation of 3 acres of public access of pastureland. The wastewater treatment facility and disposal site are located in Cleburne State Park, approximately 300 feet from the north shore of Cedar Lake in Cleburne State Park and approximately 7,500 feet north-northwest of the junction of Park Road 21 and Farm-to-Market Road 1434, in Johnson County, Texas 76033.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202104327
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 27, 2021

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Notice of Water Rights Application

Notice Issued October 27, 2021

APPLICATION NO. 13218; Jackson Water Farm, LLC, Cheryl Rene Jackson, and George T. Jackson Jr., Applicants, 9701 Pozos Lane, Conroe, Texas 77303, request authorization to maintain an existing dam and reservoir, impounding 103.1 acre-feet of water, on an unnamed tributary of Blue Creek, Neches River Basin, in San Augustine County. The applicants also seek authorization to use the bed and banks of the unnamed tributary of Blue Creek to convey 877.5 acre-feet of groundwater to maintain the reservoir and for subsequent diversion and use of not to exceed 775.8 acre-feet per year for mining purposes in San Augustine County. More information on the application and how to participate in the permitting process is given below. The application was received on August 7, 2015. Additional information was received on June 27, 2016, August 1, 2016, August 2, 2017, and September 28, 2017. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on April 26, 2018. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, maintaining the alternate source and an accounting plan. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk

by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the TCEQ will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering WRPERM 13218 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202104326
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 27, 2021

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Update to the Water Quality Management Plan (WQMP)

The Texas Commission on Environmental Quality (TCEQ or commission) requests comments from the public on the draft October 2021 Update to the WQMP for the State of Texas.

Download the draft October 2021 WQMP Update at *https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html* or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas. Please periodically check the following website for updates, in the event the TCEQ Library is closed due to COVID-19 restrictions: *https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_comment.html.*

The WQMP is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than **5:00 p.m. on December 15, 2021.**

How to Submit Comments

Comments must be submitted in writing to:

Gregg Easley Texas Commission on Environmental Quality Water Quality Division, MC 150 P.O. Box 13087 Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420 ***or*** emailed to Gregg Easley at *Gregg.Easley@tceq.texas.gov,* but must be followed up with written comments by mail within five working days of the fax or email date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Mr. Easley at (512) 239-4539 or by email at *Gregg.Easley@tceq.texas.gov.*

TRD-202104406
Guy Henry
Deputy Director, Environmental Law
Texas Commission on Environmental Quality
Filed: November 2, 2021

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Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for Alignment Health Insurance Company of Arizona, Inc., a foreign health maintenance organization (HMO), to add the assumed name Alignment Health Insurance Company of Texas, Inc. The home office is in Phoenix, Arizona.

Application by First Catholic Slovak Union of the United States of America and Canada, a foreign life, accident and/or health company with HMO authority, to add DBA (doing business as) FCSU Financial in connection with their managed care business. The home office is in Independence, Ohio.

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-202104425
James Person
General Counsel
Texas Department of Insurance
Filed: November 3, 2021

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Texas Lottery Commission

Scratch Ticket Game Number 2417 "7-11-21®"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2417 is "7-11-21®". The play style is "find symbol".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2417 shall be $1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2417.

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, 08, 09, 10, 12, 13, 14, 15, 16, 18, 19, 20, 22, 7 SYMBOL, 11 SYMBOL, 21 SYMBOL, $1.00, $2.00, $3.00, $5.00, $9.00, $10.00, $15.00, $30.00, $90.00 and $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2417 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
22	TWTO
7 SYMBOL	WIN$
11 SYMBOL	DBL
21 SYMBOL	TRP
$1.00	ONE$
$2.00	TWO$
$3.00	THR$

$5.00	FIV$
$9.00	NIN$
$10.00	TEN$
$15.00	FFN$
$30.00	TRTY$
$90.00	NITY$
$1,000	ONTH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2417), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2417-0000001-001.

H. Pack - A Pack of the "7-11-21®" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "7-11-21®" Scratch Ticket Game No. 2417.

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 "7-11-21®" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twelve (12) Play Symbols. If a player reveals a "7" Play Symbol in any ROW, the player wins the PRIZE for that ROW. If a player reveals an "11" Play Symbol in any ROW, the player wins DOUBLE the PRIZE for that ROW. If a player reveals a "21" Play Symbol in any ROW, the player wins TRIPLE the PRIZE for that ROW. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twelve (12) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twelve (12) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twelve (12) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twelve (12) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. FIND SYMBOL: No matching non-winning Play Symbols on a Ticket.

D. FIND SYMBOL: No matching non-winning Prize Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

E. FIND SYMBOL: A non-winning Prize Symbol will never match a winning Prize Symbol.

F. FIND SYMBOL: The "11" (DBL) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

G. FIND SYMBOL: The "21" (TRP) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

H. FIND SYMBOL: The "7" (WIN$) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "7-11-21®" Scratch Ticket Game prize of $1.00, $2.00, $3.00, $5.00, $9.00, $15.00, $30.00 or $90.00, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00 or $90.00 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 "7-11-21®" Scratch Ticket Game prize of $1,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "7-11-21®" 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 "7-11-21®" 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 "7-11-21®" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 10,080,000 Scratch Tickets in Scratch Ticket Game No. 2417. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2417 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	1,142,400	8.82
$2.00	403,200	25.00
$3.00	201,600	50.00
$5.00	134,400	75.00
$9.00	100,800	100.00
$15.00	67,200	150.00
$30.00	17,640	571.43
$90.00	4,200	2,400.00
$1,000	10	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.87. 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. 2417 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. 2417, 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-202104423
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 3, 2021

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Permian Basin Regional Planning Commission

Request for Proposal #2022-001 for Audit for Years 2021 - 2023

Permian Basin Regional Planning Commission (PBRPC) is accepting proposals for a financial audit covering years 2021 - 2023. Proposals are due by December 1, 2021, at 3:00 p.m. via FEDEX, UPS, hand-delivery or courier delivery to: Permian Basin Regional Planning Commission, ATTN: Cathe Henderson, 2910 LaForce Blvd., Midland, Texas 79706 **or** via USPS to P.O. Box 60660, Midland, Texas 79711. Any proposal received after that time and date will not be considered.

For bid specifications, the Request for Proposal will be available on the PBRPC website at www.pbrpc.org.

The PBRPC Board reserves the right to reject any and/or all bids, and to make awards as they appear advantageous to PBRPC.

PBRPC is an EEO Employer & Service Provider. Auxiliary Aides and Limited English Proficiency Assistance are Available Upon Request.

TRD-202104398
Virginia Belew
Executive Director
Permian Basin Regional Planning Commission
Filed: November 1, 2021

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on October 28, 2021, for recovery of universal service funding under Public Utility Regulatory Act (PURA) §56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Border to Border Communications, Inc. to Recover Funds from the Texas Universal Service Fund Under PURA §56.025 and 16 TAC §26.406, Docket Number 52769.

The Application: Border to Border Communications, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Border to Border Communications, Inc. for 2021. Border to Border Communications requests that the Commission allow recovery of funds from the TUSF in the amount of $1,512,879 for 2021 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 52769.

TRD-202104387
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: November 1, 2021

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Notice of Application for Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on October 29, 2021, for recovery of universal service funding under Public Utility Regulatory Act (PURA) §56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Valley Telephone Cooperative, Inc. to Recover Funds from the Texas Universal Service Fund Under PURA §56.025 and 16 TAC §26.406, Docket Number 52776.

The Application: Valley Telephone Cooperative, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Valley Telephone Cooperative, Inc. for 2018. Valley Telephone Cooperative requests that the Commission allow recovery of funds from the TUSF in the amount of $1,516,055.66 for 2018 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 52776.

TRD-202104401
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: November 1, 2021

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Notice of Application for Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on October 28, 2021, for recovery of universal service funding under Public Utility Regulatory Act (PURA) §56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Community Telephone Company, Inc. to Recover Funds from the Texas Universal Service Fund Under PURA §56.025 and 16 TAC §26.406, Docket Number 52768.

The Application: Community Telephone Company, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Community Telephone Company Inc. for 2020. Community Telephone requests that the Commission allow recovery of funds from the TUSF in the amount of $2,297,607.37 for 2020 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 52768.

TRD-202104402
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: November 1, 2021

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Notice of Application for True-Up of 2019 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 28, 2021, for true-up of 2019 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Blossom Telephone Company for True-Up of 2019 FUSF Impacts to TUSF, Docket Number 52763.

The Application: Blossom Telephone Company filed a true-up in accordance with findings of fact numbers 21 and 22 of the final Order in Docket No. 50220. In that docket, the Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that Blossom Telephone received in Federal Universal Service Fund (FUSF) revenue by $186,025 for calendar year 2019. Blossom Telephone subsequently recovered $118,764 from the Texas Universal Service Fund (TUSF). Based on the data, calculations, supporting documentation and affidavits included with the application, Blossom Telephone asserts that it is due an additional $9,911.17 from the TUSF for 2019.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 52763.

TRD-202104400
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: November 1, 2021

♦ ♦ ♦

Notice of Application to Amend Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 25, 2021, to amend a designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Charter Fiberlink TX-CCO, LLC and Time Warner Cable Information Services (Texas), LLC to Amend Eligible Telecommunications Carrier Designations, Docket Number 52750.

The Application: Charter Fiberlink TX-CCO, LLC and Time Warner Cable Information Services (Texas), LLC request that their ETC designations be amended to remove certain census blocks from their service areas. The application includes a list of the census blocks to be removed and a revised list of the remaining census blocks for which Charter Fiberlink TX-CCO and Time Warner Cable Information Services (Texas) should remain designated as ETCs under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418. The certain census blocks to be removed are located in Bell, Clay, Grayson, Gregg, Harrison, Jefferson, Milam, and Rusk counties and are further identified in exhibit 1 to the application.

Persons who wish to file a motion to intervene or comments on the application should contact the commission no later than December 17, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 52750.

TRD-202104337
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: October 28, 2021

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Supreme Court of Texas

Order Amending Standards for Attorney Certification in Civil Trial Law

Supreme Court of Texas

Misc. Docket No. 21-9128

Order Amending Standards for Attorney Certification in Civil Trial Law

ORDERED that:

1. The Court approves the following amendments to the Standards for Attorney Certification by the Texas Board of Legal Specialization in Civil Trial Law.

2. The amendments are effective November 1, 2021.

3. The Clerk of the Supreme Court is directed to:

   a. file a copy of this Order with the Secretary of State;

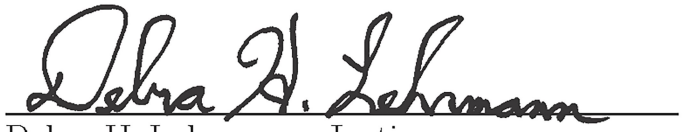
   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the Texas Bar Journal;

   c. send a copy of this Order to each elected member of the Legislature; and

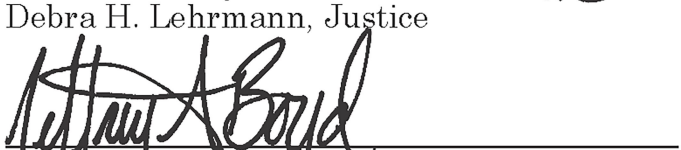
   d. submit a copy of this Order for publication in the Texas Register.

Dated: October 22, 2021

Nathan L. Hecht, Chief Justice



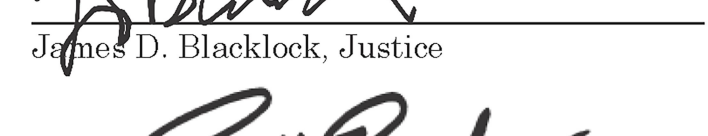
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice

John P. Devine, Justice

James D. Blacklock, Justice



J. Brett Busby, Justice

Jane N. Bland, Justice

Rebeca A. Huddle, Justice

TEXAS BOARD OF LEGAL SPECIALIZATION
STANDARDS FOR ATTORNEY CERTIFICATION

***

PART II
SPECIFIC AREA REQUIREMENTS

These are specific requirements that apply to the specialty area listed below. The specific requirements include the definitions, substantial involvement, references, and other certification and recertification requirements for the specialty area. You will also need to refer to the Standards for Attorney Certification, Part I – General Requirements for requirements that apply to all specialty areas.

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SECTION V
CIVIL TRIAL LAW

(Area ID: CT / Year Started: 1978)

A. DEFINITIONS.

1. Civil trial law is the practice of law dealing with litigation of civil controversies in all areas of substantive law before state and federal courts of record.
2. A trial is a contested proceeding in a court of record within the judicial branch of government that involves the submission of testimonial evidence to a court or jury in support or defense of claims for relief submitted by the parties. A trial commences on the initial presentation of evidence to the court or jury. Summary judgment proceedings, other pretrial proceedings, default judgments, and civil appeals are not trials within the meaning of these standards.
3. Lead counsel is the lawyer who takes primary responsibility for the representation of the client in the case. In a jury case, to be considered lead counsel, applicant must, at a minimum, have made an opening statement or closing argument and conducted significant direct or cross-examination of live witnesses at trial.

B. **SUBSTANTIAL INVOLVEMENT.** To demonstrate substantial involvement and special competence in Texas civil trial law practice, applicant must, at a minimum, meet the following requirements.

1. **Certification.**

a. Percentage of Practice Requirement. Applicant must have devoted a minimum of ~~35%~~30% of his or her time practicing civil trial law in Texas during each year of the three years immediately preceding the application.

b. Task Requirements. Applicant must provide information as required by TBLS concerning specific tasks he or she has performed in Texas civil trial law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.

(1) Applicant must have tried at least ~~20~~15 civil trials in a court of record in Texas or in federal court that involved an amount in controversy in excess of $25,000 or significant nonmonetary claims. Of these trials:

i. at least seven must be jury trials that were conducted by applicant as lead counsel and submitted to the jury;

ii. no more than ~~seven~~five may be personal injury cases;

iii. no more than ~~seven~~five may be family law cases; and

iv. in at least five trials, applicant must have played a significant role in conducting jury selection.

(2) The following types of proceedings may be substituted for three of the other ~~13~~8 civil trials.

i. A civil jury trial conducted by applicant as lead counsel in a state court of record ***outside*** of Texas, but within the United States, where the case was submitted to the jury for decision. The amount in controversy must have exceed $25,000, or the case must have involved significant nonmonetary claims. Formal rules of evidence and procedure must have applied in the case.

ii. A civil trial conducted by applicant as lead counsel

that concluded before submission to either a jury or the court (in a bench trial) in a court of record in Texas or in federal court. The trial must have concluded: (a) after voir dire, opening statements, and the examination of witnesses in a jury trial; or (b) after opening statements and the examination of witnesses in a bench trial. The amount in controversy must have exceeded $25,000, or the case must have involved significant nonmonetary claims.

iii. An arbitration conducted to a final decision by applicant as lead counsel in which formal rules of evidence and procedure governed the proceeding. The amount in controversy must have exceeded $25,000, or the case must have involved significant nonmonetary claims.

iv. A criminal jury trial conducted by applicant as lead counsel that resulted in a final verdict in a court of record in Texas or in federal court.

v. A contested administrative proceeding conducted by applicant as lead counsel for a party before a Texas or federal agency. The matter must have been resolved after a hearing on the merits in which witnesses were examined by direct and cross-examination, and a final order must have been issued by the agency. The amount in controversy must have exceeded $25,000, or the case must have involved significant nonmonetary claims.

vi. A temporary or preliminary injunction hearing conducted by applicant as lead counsel that resulted in a final decision on the temporary or preliminary injunction request. In the hearing, applicant must have presented an opening and closing statement and conducted live direct and cross-examination of witnesses. The amount in controversy must have exceeded $25,000, or the case must have involved significant nonmonetary claims.

2. **Recertification.** Applicant must have devoted a minimum of ~~35%~~30% of his or her time practicing civil trial law in Texas during each year of the five-year period of certification unless applicant meets the exception in Part I–General Requirements, Section VI, C,1(b).

C. **REFERENCE REQUIREMENTS.** Applicant must submit a minimum of five names and addresses of persons to be contacted as references to attest to his or her competence in civil trial law. These persons must be substantially involved in civil trial law and be familiar with applicant's civil trial law practice.

1. **Certification.** Applicant must submit names of persons with whom he or she has had dealings involving civil trial law matters within the three years immediately preceding application.
2. **Recertification.** Applicant must submit names of persons with whom he or she has had dealings involving civil trial law matters since certification or the most recent recertification.
3. **Reference Types.** Applicant must submit the following types of references:
   a. Four Texas attorneys who are substantially involved in civil trial law. Applicant must have tried a civil trial law matter with or against one of these attorneys.
   b. One judge of any court of record in Texas whom applicant has appeared before as an advocate in a civil trial law matter.

TRD-202104329
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: October 27, 2021

♦ ♦ ♦

Texas Department of Transportation

Public Transportation Division - Notice of Call for Projects

The Texas Department of Transportation (department) announces a Call for Projects for:

1. Statewide Planning Assistance - 49 U.S.C. §5304, 43 Texas Administrative Code (TAC) §31.22

2. Rural Transportation Assistance - 49 U.S.C. §5311(b)(3), 43 TAC §31.37

3. Intercity Bus - 49 U.S.C. §5311(f), 43 TAC §31.36

4. Rural Discretionary - 49 U.S.C. §5311 - Discretionary Program, 43 TAC §31.36

5. Fleet Replacement - 49 U.S.C. §5307 - Urbanized Area Formula Program, 43 TAC §31.26

These public transportation projects will be funded through the Federal Transit Administration (FTA) §5304, §5311(b)(3), §5311(f), §5311, and §5307 programs. It is anticipated that multiple projects from multiple funding programs will be selected for State Fiscal Year 2023-2024. Project selection will be administered by the Public Transportation Division. Projects selected for funding under the §5304, §5311(b)(3), §5311(f), and §5311 programs will be awarded in the form of grants with payments made for allowable reimbursable expenses or for defined deliverables. Successful applicants will become subrecipients of the department. Successful applicants of projects selected for funding under §5307 will apply for funds directly with FTA for the approved project.

Information and instructions regarding the call for projects will be posted on the Public Transportation Division website at *https://www.txdot.gov/inside-txdot/division/public-transportation/local-assistance.html.*

Purpose: The Call for Projects invites applications for services to develop, promote, coordinate, or support public transportation. Applications submitted for funding should reflect projects that will:

-- assist small urban and rural transit agencies to develop projects and strategies to further meet the transportation needs of local residents using current program resources;

-- design and implement training and technical assistance projects and other support services tailored to meet the specific needs of transit operators in rural areas;

-- assist public transportation providers in rural areas to provide passenger transportation services to the general public using the most efficient combination of knowledge, materials, resources, and technology;

-- support connections, services, and infrastructure to meet the intercity mobility needs of residents in rural areas; or

-- maintain capital assets in a state of good repair.

Eligible Applicants: Eligible applicants may include state agencies, local public bodies and agencies thereof, private nonprofit organizations, operators of public transportation services, state transit associations, transit districts, and private for-profit operators, dependent on federal program. Eligible applicants are defined in 43 TAC Chapter 31.

Key Dates and Deadlines:

November 12, 2021: Opportunity opens in eGrants

January 7, 2022: Deadline for submitting written questions

February 4, 2022: Deadline for receipt of applications

June 30, 2022: Target date for presentation of project selection recommendations to the Texas Transportation Commission for action

September 1, 2022: Target date for most project grant agreements to be executed

Questions: Individuals with questions relating to the Call for Projects should email PTN_ProgramMgmt@txdot.gov.

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Texas Department of Transportation
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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 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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