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# TEXAS REGISTER

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# TEXAS REGISTER

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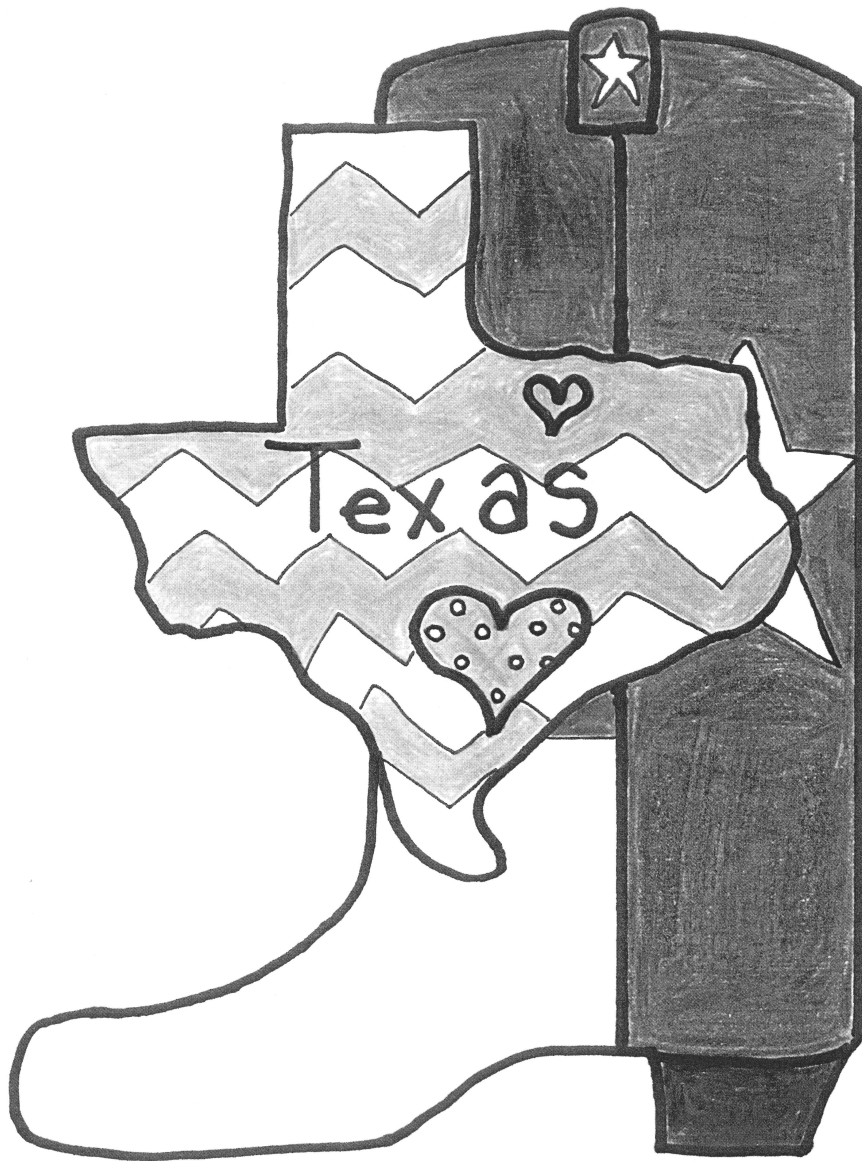
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# THE GOVERNOR

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

## Appointments

### Appointments for November 19, 2021

Appointed to the Texas Animal Health Commission, for a term to expire September 6, 2027, Alecysa H. "Ali" Broyles, D.V.M. of Weatherford, Texas (replacing Michael L. "Mike" Vickers, D.V.M. of Falfurrias, whose term expired).

Appointed to the Texas Animal Health Commission, for a term to expire September 6, 2027, Kenneth G. "Ken" Jordan of San Saba, Texas (Mayor Jordan is being reappointed).

Appointed to the Texas Animal Health Commission, for a term to expire September 6, 2027, Coleman H. Locke of Wharton, Texas (Mr. Locke is being reappointed).

Appointed to the Texas Animal Health Commission, for a term to expire September 6, 2027, Benjamin L. Turner, Ph.D. of Kingsville, Texas. (replacing James D. "Jim" Eggleston, Jr. of Weatherford, whose term expired).

Appointed to the Texas Commission on Special Education Funding pursuant to HB 1525, 87th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Stacey Neal Combost of Huntsville, Texas.

Appointed to the Texas Crime Stoppers Council, for a term to expire September 1, 2025, Charles P. "Perry" Gilmore, III, Ph.D. of Amarillo, Texas (Mr. Gilmore is being reappointed).

Appointed to the Texas Crime Stoppers Council, for a term to expire September 1, 2025, Carlo G. Hernandez of Brownsville, Texas (Mr. Hernandez is being reappointed).

Greg Abbott, Governor

TRD-202104662

## Budget Execution Order

I am in receipt of your proposal dated November 19, 2021. In the proposal, you state there is an emergency pursuant to Section 317.002 of the Government Code and recommend the transfer of funding between agencies as shown below.

Pursuant to Section 317.005(b) of the Government Code, I am ratifying the proposal. It is paramount to our democracy that the citizens of Texas have faith and confidence in the election process. The Legislature demonstrated a strong commitment to election integrity when it passed Senate Bill 1 during the Second Called Session of the 87th Legislature, which I signed into law. The transfer of funds is necessary to ensure that the Secretary of State has budget authority to adequately accomplish the goals sought by the Legislature.

Therefore, it is ordered that:

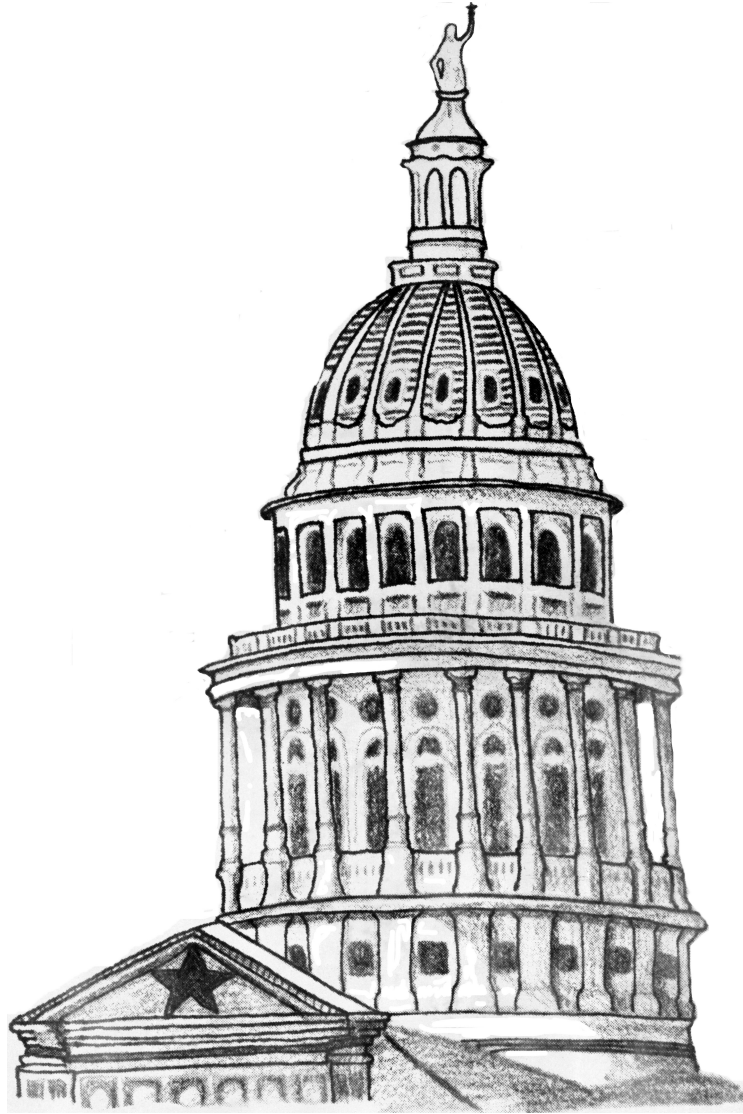
From appropriations made to the Texas Department of Criminal Justice by Senate Bill No. 1, General Appropriations Act, Acts of the 87th Legislature, Regular Session, 2021, the amount of \$4,000,000 in General Revenue appropriated for fiscal year 2023 in Strategy C.1.1., Correctional Security Operations, shall be transferred to the Secretary of State for use during the 2022-2023 state fiscal biennium, for the purpose of ensuring election integrity.

I hereby certify that this proposal has been reviewed by legal counsel and found to be within my authority.

*Issued in Austin, Texas on November 19, 2021, 2:00 p.m.*

Greg Abbott, Governor

TRD-202104693





# TEXAS ETHICS COMMISSION

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

## Advisory Opinion Requests/Questions

Whether an officer or employee of a district attorney's office may use public funds to create and distribute items with logos that display the name and title of the officer to the public. (AOR-651.)

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

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

Issued in Austin, Texas, on November 18, 2021.

TRD-202104643

J.R. Johnson

General Counsel

Texas Ethics Commission

Filed: November 18, 2021



Whether a candidate or officeholder may use political contributions to establish and control a general-purpose political committee, which then pays the candidate or officeholder a salary. (AOR-653.)

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

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

Issued in Austin, Texas, on November 18, 2021.

TRD-202104644

J.R. Johnson

General Counsel

Texas Ethics Commission

Filed: November 18, 2021



Whether the revolving door law section 572.054 of the Government Code would prohibit a former employee of a state agency from providing certain services. (AOR-655.)

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

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

Issued in Austin, Texas, on November 18, 2021.

TRD-202104645

J.R. Johnson

General Counsel

Texas Ethics Commission

Filed: November 18, 2021





# EMERGENCY RULES

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

## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 448. STANDARD OF CARE SUBCHAPTER F. PERSONNEL PRACTICES AND DEVELOPMENT

##### 25 TAC §448.603

The Department of State Health Services is renewing the effectiveness of emergency amended §448.603 for a 60-day period. The text of the emergency rule was originally published in the August 6, 2021, issue of the *Texas Register* (46 TexReg 4757).

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

TRD-202104692

Nycia Deal  
Attorney

Department of State Health Services  
Original effective date: July 26, 2021  
Expiration date: January 21, 2022

For further information, please call: (512) 834-4591



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 554. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION SUBCHAPTER CC. COVID-19 EMERGENCY RULE

##### 26 TAC §554.2802

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 554, Nursing Facility Requirements for Licensure and Medicaid Certification, new §554.2802. This emergency rule is adopted in response to COVID-19 and requires nursing facilities to take certain actions to reduce the risk of spreading COVID-19. The emergency rule also permits nursing facilities to request temporary increases in capacity and Medicaid bed allocations to aid in

preventing the transmission of COVID-19 or caring for residents with COVID-19. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing if it finds 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. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for Nursing Facility Response to COVID-19.

To protect nursing facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to mitigate and contain COVID-19 and to permit a nursing facility to request a temporary increase in capacity or Medicaid bed allocation as part of the facility's response to COVID-19. The purpose of the new rule is to describe the requirements nursing facility providers must immediately put into place to mitigate and contain COVID-19 and the procedures and criteria for requesting a temporary capacity increase or a temporary Medicaid bed allocation increase.

#### STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034, §531.0055, and §531.021, Texas Health and Safety Code §242.001 and §242.037, and Texas Human Resources Code §32.021 and §32.0213. 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 health and human services system. Texas Government Code §531.021 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 Health and Safety Code §242.001 states 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. Texas Health and Safety Code §242.037 requires the Executive Commissioner of HHSC to make and enforce rules prescribing minimum standards relating to quality of

care and quality of life for nursing facility residents. Texas Human Resources Code §32.021 provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

Texas Human Resources Code §32.0213 requires the Executive Commissioner of HHSC to establish procedures for controlling the number of Medicaid beds in nursing facilities.

The new rule implements Texas Government Code §531.0055 and §531.021, Texas Health and Safety Code Chapter 242, and Texas Human Resources Code §32.021 and §32.0213.

§554.2802. Nursing Facility COVID-19 Response.

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

(1) Cohort--A group of residents placed in rooms, halls, or sections of the facility with others who have the same COVID-19 status or the act of grouping residents with other residents who have the same COVID-19 status.

(2) Cohorting--The act of establishing a cohort.

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

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

(5) COVID-19 status--The status of a person based on COVID-19 test results, symptoms, or other factors that consider the person's potential for having the virus.

(6) Fully-vaccinated--A person who received the second dose in a two-dose COVID-19 vaccination series or received one dose of a single-dose COVID-19 vaccination and it has been at least 14 days since receiving the vaccination.

(7) Isolated--The separation of people who have COVID-19 positive status from those who have COVID-19 negative status and those whose COVID-19 status is unknown.

(8) Long-term care (LTC) Providers--Nursing facilities, assisted living facilities, intermediate care facilities for individuals with intellectual disability or related conditions, day activity and health services facilities, prescribed pediatric extended care centers, home and community support services agencies, state supported living centers, home and community-based services waiver providers, and Texas home living waiver providers.

(9) Personal protective equipment (PPE)--Specialized clothing or equipment worn by nursing facility staff for protection against transmission of infectious diseases such as COVID-19, including masks, goggles, face shields, gloves, and disposable gowns.

(10) Quarantine--The practice of keeping someone who might have been exposed to COVID-19 away from others. Quarantine helps prevent the spread of disease that can occur before a person knows they are sick or if they are infected with the virus without feeling symptoms.

(11) Unknown COVID-19 status--The status of a resident, except as provided by the CDC for fully-vaccinated residents or residents who have recovered from COVID-19, who:

(A) is a new admission or readmission;

(B) has spent one or more nights away from the facility;

(C) has had known exposure or close contact with a person who is COVID-19 positive; or

(D) is exhibiting symptoms of COVID-19 while awaiting test results.

(b) Response plan. A nursing facility must have a COVID-19 response plan that includes:

(1) cohorting plans that include designated space for COVID-19 negative residents, COVID-19 positive residents, and residents with unknown COVID-19 status,

(2) spaces for staff to don and doff PPE that minimize the movement of staff through other areas of the facility;

(3) resident transport protocols;

(4) plans for obtaining and maintaining a two-week supply of PPE, including surgical facemasks, N95 facemasks, gowns, gloves, and goggles or face shields; and

(5) resident recovery plans for continuing care after a resident recovers from COVID-19.

(c) Screening.

(1) Visitors. A nursing facility must screen all visitors as provided in §554.2803 of this title (relating to Nursing Facility COVID-19 Response - Expansion of Reopening Visitation).

(2) Residents. A nursing facility must screen each resident as described below. Resident screenings must be documented in the resident's chart. A resident who meets any of the criteria must be cohorted appropriately.

(A) Upon a resident's admission or readmission to the facility, the facility must screen the resident for the following criteria:

(i) fever, defined as a temperature of 100.4 degrees Fahrenheit and above;

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

(iii) any other signs and symptoms as outlined by CDC in Symptoms of Coronavirus at [cdc.gov](https://www.cdc.gov);

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

(v) a positive COVID-19 test result from a test performed in the last 10 days.

(B) At least once a day the facility must screen each resident for the criteria in subparagraph (A)(i)-(iv) of this paragraph.

(3) Employees and contractors. A nursing facility must screen each employee or contractor for the criteria in paragraph (2)(A)(i)-(v) of this subsection before entering the facility at the start of their shift. Staff screenings must be documented in a log kept at the facility entrance and must include the name of each person screened, the date and time of the evaluation, and the results of the evaluation. Staff who meet any of the criteria must not be permitted to enter the facility.

(4) Other people who come to the facility. A nursing facility must screen all other people who come to the facility, except emergency services personnel entering the facility or facility campus in an emergency, for the criteria in paragraph (2)(A)(i)-(v) of this subsection before entering the facility. These screenings must be documented in

a log kept at the entrance to the facility, which must include the name of each person screened, the date and time of the screening, and the results of the screening. Anyone who meets any of the screening criteria must leave the nursing facility campus.

(d) Cohorting.

(1) Cohorting residents. A nursing facility must cohort residents based on the residents' COVID-19 status.

(A) COVID-19 status unknown. A resident with unknown COVID-19 status must be quarantined and monitored for fever and symptoms of COVID-19, in accordance with CDC guidance.

(B) COVID-19 positive. A resident with COVID-19 positive status must be isolated until the resident meets CDC guidelines for the discontinuation of transmission-based precautions.

(2) Cohort staffing policy. A nursing facility must implement a staffing policy requiring:

(A) staff to wear appropriate PPE, based on the cohort with which they work;

(B) staff to report to the facility via phone prior to reporting for work if they have known exposure or symptoms; and

(C) staff to perform self-monitoring on days they do not work.

(e) Staff who work with other LTC providers. A nursing facility must develop and implement a policy regarding staff working with other LTC providers that limits the sharing of staff with other LTC providers, unless required in order to maintain adequate staffing at a facility.

(f) PPE. A nursing facility must develop and enforce written standards, policies, and procedures for the facility's infection prevention and control program which must include standard and transmission-based precautions to prevent the spread of COVID-19, including the appropriate use of PPE. All facemasks and N95 masks must be in good functional condition, as described in the COVID-19 Response for Nursing Facilities at [hhs.texas.gov](https://hhs.texas.gov), and worn appropriately, completely covering the nose and mouth.

(1) A nursing facility must comply with CDC guidance on the optimization of PPE when supply limitations require PPE to be reused.

(2) A nursing facility must document all efforts made to obtain PPE, including the organization contacted and the date of each attempt.

(g) Fully-vaccinated staff. A nursing facility's infection prevention and control program may allow fully-vaccinated staff to not wear a facemask or other PPE or maintain physical distancing when they are in well-defined areas that are restricted from resident access in accordance with CDC guidance.

(h) Reporting of COVID-19 activity. A nursing facility must report COVID-19 activity as required by §554.1601(d)(2) of this title (relating to Infection Control) and 42 Code of Federal Regulations §483.80(g)(1)-(2). COVID-19 activity must be reported to HHSC Complaint and Incident Intake, as described below.

(1) Report the first confirmed case of COVID-19 in staff or residents, and the first confirmed case of COVID-19 after a facility has been without new cases for 14 days or more, to HHSC Complaint and Incident Intake (CII) through the Texas Unified Licensure Information Portal (TULIP) or by calling 1-800-458-9858 within 24 hours of the confirmed positive result.

(2) Submit a Form 3613-A, Provider Investigation Report, to HHSC Complaint and Incident Intake through TULIP or by calling 1-800-458-9858 within five working days from the day a confirmed case is reported to CII.

(i) Capacity Changes During COVID-19 Pandemic.

(1) A nursing facility may request a temporary capacity increase to aid in preventing the transmission of COVID-19 or caring for residents with COVID-19. To request a temporary capacity increase, a nursing facility must send an email to the Associate Commissioner for Long-term Care Regulation at: [LTCRSurveyOperations@hhs.texas.gov](mailto:LTCRSurveyOperations@hhs.texas.gov). The request must contain the following information:

(A) provider name;

(B) facility name;

(C) facility identification number;

(D) provider address;

(E) provider phone number;

(F) current capacity;

(G) current census;

(H) capacity requested;

(I) reasoning for the temporary capacity increase; and

(J) plan to care for the increased number of residents.

(2) If approved, the temporary capacity increase is valid until 120 days after approval or when the Governor's March 13, 2020, Proclamation of Disaster is terminated, whichever is earlier.

(3) A nursing facility may request an extension of a temporary capacity increase. HHSC may grant approval of an extension on a case-by-case basis. HHSC may extend the temporary capacity increase to permit the nursing facility adequate time to apply for a capacity increase under §554.206 of this title (relating to Increase in Capacity) or transition back to its previous licensed capacity.

(4) Before the temporary capacity increase approval expires, the nursing facility must:

(A) apply for and receive an increase in capacity through TULIP using the procedures established in §554.206 of this title; or

(B) reduce its census so as to not exceed its licensed capacity before the temporary capacity increase.

(j) Medicaid Bed Allocation During COVID-19 Pandemic.

(1) The property owner may request a temporary Medicaid bed allocation increase to aid in preventing the transmission of COVID-19 or caring for residents with COVID-19. To request a temporary Medicaid bed allocation increase, a nursing facility must send an email to the Director of Long-term Care Licensing and credentialing at: [Medicaid\\_Bed\\_Allocation@hhsc.state.tx.us](mailto:Medicaid_Bed_Allocation@hhsc.state.tx.us). The request must contain the following information:

(A) provider name;

(B) facility name;

(C) facility identification number;

(D) provider address;

(E) provider phone number;

(F) current licensed capacity;

(G) current approved capacity, if the facility received approval for a temporary capacity increase;

(H) current Medicaid bed occupancy;

(I) current Medicaid bed allocation;

(J) Medicaid bed allocation requested; and

(K) reasoning for the temporary Medicaid bed allocation increase.

(2) If approved, the temporary Medicaid bed allocation increase is valid until 120 days after approval or when the Governor's March 13, 2020, Proclamation of Disaster is terminated, whichever is earlier.

(3) A nursing facility may request an extension of a temporary Medicaid bed allocation increase. HHSC may grant approval of an extension on a case-by-case basis. HHSC may extend the temporary Medicaid bed allocation increase to permit the nursing facility adequate time to request and receive a Medicaid bed allocation increase under §554.2322 of this title (relating to Medicaid Bed Allocation Requirements) or transition back to its previous Medicaid bed allocation status. If a nursing facility requests an extension to transition back to its previous Medicaid bed allocation status or upon request of HHSC, the nursing facility must submit a plan for reducing the number of residents who have Medicaid as a payor source to the Director of Long-term Care Licensing and Credentialing at: Medicaid\_Bed\_Allocation@hhsc.state.tx.us. HHSC may request additional information, if needed.

(4) Before the temporary Medicaid bed allocation increase approval expires, the nursing facility must:

(A) apply for and receive an increase in Medicaid bed allocation per §554.2322 of this title by submitting a request

to the Medicaid Bed Allocation email box: Medicaid\_Bed\_Allocation@hhsc.state.tx.us; or

(B) reduce the number of residents who have Medicaid as a payor source, so as to not exceed its Medicaid bed allocation before the temporary increase.

(5) A nursing facility may request a voluntary reduction in its licensed Medicaid bed allocation. The nursing facility may not reduce the number of Medicaid beds allocated to the facility to fewer than the minimum number needed to accommodate the residents with Medicaid as a payor source currently living in the nursing facility.

(6) A nursing facility may not reduce its Medicaid bed allocation to less than five beds unless the nursing facility voluntarily ceases to participate in Medicaid and follows the process for withdrawal from the Medicaid program contained in §554.2310 of this title (relating to Nursing Facility Ceases to Participate).

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 November 17, 2021.

TRD-202104605

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: November 28, 2021

Expiration date: March 27, 2022

For further information, please call: (512) 438-3161

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# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

##### SUBCHAPTER B. ADVISORY COMMITTEES

##### DIVISION 1. COMMITTEES

###### 1 TAC §351.843

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §351.843, concerning Early Childhood Intervention Advisory Committee, in Texas Administrative Code (TAC), Part 15, Chapter 351, Subchapter B, Division 1.

###### BACKGROUND AND PURPOSE

The purpose of the proposal is to move the ECI advisory committee requirements from 40 TAC Chapter 101, Subchapter C, Division 3 to 1 TAC Chapter 351 and format the advisory committee rule so it aligns with other HHSC advisory committee rules.

The proposed repeal of 40 TAC Chapter 101, Subchapter C, Division 3, will remove rules related to ECI from the chapter related to the Department of Assistive and Rehabilitative Services, which was abolished September 1, 2016, and relocate them to 1 TAC Chapter 351, where other HHSC advisory committee rules are located. The repeal is published elsewhere in this issue of the *Texas Register*.

###### SECTION-BY-SECTION SUMMARY

Proposed new §351.843 moves requirements related to the ECI advisory committee from 40 TAC Chapter 101, Subchapter C, Division 3, Early Childhood Intervention Advisory Committee, to 1 TAC Chapter 351, Subchapter B, Division 1, Committees.

###### FISCAL NOTE

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

###### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule applies only to the ECI advisory committee, which is not a small or micro-business, or a rural community.

###### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

###### COSTS TO REGULATED PERSONS

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

###### PUBLIC BENEFIT AND COSTS

Michelle Alletto, Chief Program and Services Officer, has determined that for each year of the first five years the rule is in effect, the public benefit will be improved guidance for the advisory committee.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the proposed rule does not require changes to current practices.

###### TAKINGS IMPACT ASSESSMENT

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

###### PUBLIC HEARING

A public hearing to receive comments on the proposal was held on November 3, 2021, at 1:00 p.m. at the John H. Winters Building, 701 W. 51st Street, Public Hearing Room 125, Austin, Texas 78751. No comments were received.

A second public hearing was held at the HHSC Executive Council meeting on November 18, 2021, at 1:00 p.m. at the John H. Winters Building, 701 W. 51st Street, Public Hearing Room 125, Austin, Texas 78751.

Please contact Sharon Stone at [ECI.Policy@hhs.texas.gov](mailto:ECI.Policy@hhs.texas.gov), if you have questions.

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to Sharon Stone at [ECI.Policy@hhs.texas.gov](mailto:ECI.Policy@hhs.texas.gov).

To be considered, comments must be submitted no later than 30 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 the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R037" in the subject line.

#### STATUTORY AUTHORITY

The new section 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 Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The new section implements Texas Government Code §531.0055 and Texas Human Resources Code Chapter 73.

#### §351.843. Early Childhood Intervention Advisory Committee.

(a) Statutory authority. The Early Childhood Intervention (ECI) Advisory Committee is authorized and required under Part C of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1441; its implementing regulations, 34 C.F.R. Part 303, Subpart G State Interagency Coordinating Council; and Texas Human Resources Code Chapter 73, Early Childhood Intervention Services. Failure to establish the advisory committee would prohibit the Early Childhood Intervention program from receiving federal financial assistance.

(b) Purpose. The committee assists and advises the Texas Health and Human Services Commission (HHSC) in performing its responsibility to provide early childhood intervention services to eligible infants and toddlers and their families.

(c) Tasks. The committee performs the following tasks:

(1) advises and assists:

(A) HHSC in developing and implementing the policies that constitute the statewide early childhood intervention system; and

(B) the Texas Education Agency regarding appropriate services and the transition of toddlers with developmental disabilities to services provided under IDEA, Part B;

(2) assists HHSC in achieving:

(A) full participation, coordination, and cooperation of all appropriate public agencies;

(B) effective implementation of the statewide system, by establishing a process that includes:

(i) seeking information from service providers, service coordinators, parents, and others about any federal, state, or local policies that impede timely service delivery; and

(ii) taking steps to ensure that any policy problems are resolved;

(C) resolution of disputes to the extent appropriate;

(3) advises and assists HHSC in certain administrative duties including:

(A) identifying sources of fiscal and other supports for services for early intervention programs;

(B) assigning financial responsibility to the appropriate agency; and

(C) promoting interagency agreements; and

(4) advises and assists HHSC in preparing applications for funds under IDEA, Part C and amendments to those applications.

(d) Reporting requirements. The committee advises and assists HHSC in preparing an annual report to the Governor of Texas and to the United States Secretary of Education (Secretary). The report must:

(1) provide the status of HHSC-contracted early childhood intervention services programs;

(2) contain the information required by the Secretary for the year for which the report is made; and

(3) be submitted to the Secretary by a date that the Secretary establishes.

(e) Open meetings. The ECI Advisory Committee complies with the requirements for open meetings under 20 U.S.C. §1441(c); 34 C.F.R. §303.602, Texas Government Code Chapters 551, 552, and 2001; and the bylaws developed by the advisory committee. HHSC accommodates special needs. Upon request, HHSC provides auxiliary aids or services to persons with disabilities.

(f) Membership. The committee is composed of no more than 25 official members appointed by the Governor of Texas. Except as may be necessary to stagger terms, the term of office of each member is six years.

(1) Members are appointed for staggered terms so that the terms of eight members expire on February 1 of each odd-numbered year.

(2) In addition to the requirements in 20 U.S.C. §1441(b) and 34 C.F.R. §303.601, the committee is composed of the following official members.

(A) At least seven official members must be parents, including minority parents.

(i) The parent members must either be parents of infants and toddlers with disabilities or be parents of children with disabilities age 12 or younger, and also must have knowledge of, or experience with, programs for infants and toddlers with disabilities.

(ii) At least one member must be a parent of a child age six or younger with a disability, preferably a parent of an infant or toddler with a disability.

(iii) No parent member may be an employee of an HHSC-contracted early childhood intervention program.



(B) At least five official members must be public or private providers of early childhood intervention services.

(C) At least one official member must be a preschool specialist from an education service center.

(D) At least one official member must be a physician, preferably a pediatrician who deals with children with developmental disabilities.

(E) At least one official member must be a professional advocate for the rights of young children with developmental disabilities.

(3) In the event of a vacancy for any reason, the Governor of Texas shall fill the vacancy with a representative of the same membership category to serve the unexpired portion of the term of the vacant position.

(4) HHSC may appoint ex officio members to perform specific, time-limited tasks as needed. HHSC determines voting status of ex officio members.

(5) HHSC may recommend to the Governor of Texas the removal of any advisory committee member who is absent more than:

(A) half of the regularly scheduled meetings that the member is eligible to attend during each calendar year; or

(B) two consecutive regularly scheduled meetings that the member is eligible to attend.

(g) Officers. The committee elects its own presiding officer or chairperson.

(h) Required Training. Each member shall complete all training on relevant statutes and rules, including Texas Government Code Chapters 551 and 552. Training will be provided by HHSC.

(i) Compensatory Per Diem. Official and ex officio members who attend meetings may be reimbursed for expenses for meals, lodging, and transportation as established in the current Texas State Appropriations Act, Article IX. The official and ex officio members who are parents are entitled to reimbursement for childcare. All official and ex officio members are entitled to reimbursement for attendant care.

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 19, 2021.

TRD-202104674

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 438-5031



## TITLE 16. ECONOMIC REGULATION

### PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

#### CHAPTER 31. ADMINISTRATION

##### 16 TAC §§31.7 - 31.9

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new rules §§31.7 - 31.9 establishing advisory committees.

#### *Background and Summary*

The commission proposes new rules establishing advisory committees. In H.B. 1545, the 86th Legislature made significant changes to the Alcoholic Beverage Code, including the addition of new Code §5.21, which authorizes the commission to establish advisory committees as it considers necessary to accomplish the purposes of the Code:

In February 2020, the commission adopted Rule §31.6: Establishment of Advisory Committees, which sets forth general parameters applicable to all advisory committees created by the commission.

The commission proposes new rules to formally create three advisory committees. Proposed Rule §31.7 would establish an advisory committee to increase the commission's oversight of the agency's internal audit function. Proposed Rule §31.8 would establish an advisory committee to increase the commission's oversight of the use and development of major information technology projects. Proposed Rule §31.9 would establish an advisory committee to advise the commission regarding the agency's public safety function.

#### *Section by Section Discussion*

##### *§31.7 Internal Audit Advisory Committee*

The commission proposes new §31.7 to establish an advisory committee to increase the commission's oversight of the agency's internal audit function.

##### *§31.8 Advisory Committee on Major Information Technology Projects*

The commission proposes new §31.8 to establish an advisory committee to increase the commission's oversight of the agency's use and development of major information technology projects.

##### *§31.9 Public Safety Advisory Committee*

The commission proposes new §31.9 to establish an advisory committee to increase the commission's oversight of the agency's public safety initiatives.

#### *Fiscal Note: Costs to State and Local Government*

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed new rules will be in effect, they are not expected to have a significant fiscal impact upon the agency. Implementation will be performed using existing agency resources. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed new and amended rules. The rules do not impact fees or fines that can be collected by another state or local government nor do they impose additional regulatory obligations on other units of government.

#### *Rural Communities Impact Assessment*

The proposed rules will not have any material adverse fiscal or regulatory impacts on rural communities. Likewise, the proposed rules will not adversely affect a local economy in a material way. The new rules apply statewide and do not impact rural communities in any manner different from urban ones or any local economy in a manner different from other local economies or the state's economy.

### *Small Business and Micro-Business Assessment/Flexibility Analysis*

No material fiscal implications are anticipated for small or micro-businesses due to the proposed rules. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

### *Takings Impact Assessment*

The proposed rules do not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

### *Public Benefits and Costs*

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the rules would be in effect, the public would benefit from the input of diverse, qualified individuals from outside of the agency with respect to improving agency operations. There is no increase in costs to the public.

### *Government Growth Impact Statement*

This paragraph constitutes the commission's government growth impact statement for the proposed new and amended rules. The analysis addresses the first five years the proposed rules would be in effect. The proposed rules neither create nor eliminate a government program. They do not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rules requires neither an increase nor a decrease in future legislative appropriations to the commission.

Comments on the proposed rules may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov). Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed rules on December 20, 2021, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 206-3451.

New rules §§31.7 - 31.9 are proposed pursuant to the commission's authority in §5.21 of the Code, which allows the commission to establish advisory committees it considers necessary to accomplish the purposes of the Alcoholic Beverage Code.

The proposed new rules do not impact any other current rules or statutes.

#### §31.7. Internal Audit Advisory Committee.

(a) Pursuant to Texas Alcoholic Beverage Code § 5.21 and commission Rule 31.6, the commission hereby establishes an Internal Audit Advisory Committee ("Committee").

(b) The purpose, role, and goal of the Committee is to advise the commission on the agency's internal audit processes.

(c) The presiding officer of the commission shall appoint two commissioners and three members of the public to serve on the Committee. The committee shall select from among its members a presiding officer.

(d) Each public member must either:

(1) hold an ownership interest or management position with an active TABC licensee or permittee; or

(2) hold a certified public accountant license or similar financial industry credentials.

(e) The commission's general counsel shall serve as a non-voting, ex officio member of the Committee.

(f) Prior to the first committee meeting, committee members shall complete training provided by the commission's General Counsel's office regarding compliance with the Texas Open Meetings Act and other applicable ethics rules.

(g) The Committee shall report to the commission at the times and in the manner it determines will best assist the commission.

(h) If the Committee holds a public comment meeting to receive input from the public, agency staff will assist the Committee in conducting the meeting.

#### §31.8. Advisory Committee on Major Information Technology Projects.

(a) Pursuant to Texas Alcoholic Beverage Code § 5.21 and commission Rule 31.6, the commission hereby establishes the Advisory Committee on Major Information Technology Projects ("Committee").

(b) The purpose, role, and goal of the Committee is to advise the commission on the agency's use and development of major information technology projects.

(c) The presiding officer of the commission shall appoint two commissioners and three members of the public to serve on the Committee. The committee shall select from among its members a presiding officer.

(d) Each public member must either:

(1) hold an ownership interest or management position with an active TABC licensee or permittee;

(2) be a practicing attorney in the field of alcohol regulation; or

(3) have significant experience in information system technology deployment.

(e) The commission's general counsel shall serve as a non-voting, ex officio member of the Committee.

(f) Prior to the first committee meeting, committee members shall complete training provided by the commission's General Counsel's office regarding compliance with the Texas Open Meetings Act and other applicable ethics rules.

(g) The Committee shall report to the commission at the times and in the manner it determines will best assist the commission.

(h) If the Committee holds a public comment meeting to receive input from the public, agency staff will assist the Committee in conducting the meeting.

#### §31.9. Public Safety Advisory Committee.

(a) Pursuant to Texas Alcoholic Beverage Code §5.21 and commission Rule 31.6, the commission hereby establishes the Public Safety Advisory Committee ("Committee").

(b) The purpose, role, and goal of the Committee is to advise the commission on the agency's public safety initiatives.

(c) The presiding officer of the commission shall appoint two commissioners and three members of the public to serve on the Committee. The committee shall select from among its members a presiding officer.

(d) Each public member must either:

(1) hold an ownership interest or management position with an active on-premises retail licensee or permittee;

(2) be a practicing attorney in the field of alcohol regulation; or

(3) have retired from the commission in good standing with a certified peace officer license.

(e) The commission's general counsel shall serve as a non-voting, ex officio member of the Committee.

(f) Prior to the first committee meeting, committee members shall complete training provided by the commission's General Counsel's office regarding compliance with the Texas Open Meetings Act and other applicable ethics rules.

(g) The Committee shall report to the commission at the times and in the manner it determines will best assist the commission.

(h) If the Committee holds a public comment meeting to receive input from the public, agency staff will assist the Committee in conducting the meeting.

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 16, 2021.

TRD-202104586

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 206-3451



## CHAPTER 45. MARKETING PRACTICES

### SUBCHAPTER F. ADVERTISING AND PROMOTION

#### **16 TAC §§45.101, 45.102, 45.105, 45.107, 45.109 - 45.112, 45.120**

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes amendments to rules §§45.101, 45.105, 45.107, 45.109 - 45.112, and 45.120; and new §45.102, Loyalty Programs.

#### Background and Summary

The commission proposes amendments to existing rules and one new rule as a result of the systematic review of all agency rules following the adoption of H.B. 1545 (citation), with which the Legislature made significant changes to the Alcoholic Beverage Code. A majority of the amendments are to conform to

H.B. 1545 and other recent legislative changes, for internal consistency, and to increase clarity and readability.

The commission proposes new §45.102, Loyalty Programs, to formally adopt into rule the current practices of the agency with respect to programs that incentivize repeat visits to the same retailer. These programs, which the proposed rule specifies do not include the use of coupons, have been allowed as a matter of policy; however, members of industry have requested and will benefit from a rule laying out the requirements and restrictions for loyalty programs. Amendments proposed for rules §45.109 and §45.112 also adopt current agency marketing practices policies in rule for greater transparency.

The commission proposes increasing the spending limit in rule §45.110 because it has remained unchanged since 1998.

The new and amended rules are proposed to become effective 20 days after their submission to the Texas Register for adoption.

#### Section by Section Discussion

##### §45.101 Rebates and Coupons

The commission proposes amendments to §45.101 to remove references to premium stamps, which are no longer in use, and for clarity and conciseness.

##### §45.102 Loyalty Programs

The commission proposes new §45.102 to promulgate in rule the agency's current policy with respect to allowable loyalty programs and to differentiate a loyalty program from a coupon.

##### §45.105 Advertising

The commission proposes amendments to §45.105 to break out an exception into its own subsection for readability and to add a new exception applicable to menus in drive-through lanes.

##### §45.107 Alcoholic Beverages Used for Cooking On Premises

The commission proposes amendments to §45.107 to conform to changes made by H.B. 1545, 86th Tex. Leg. (R.S. 2019).

##### §45.109 Restocking and Rotation of Alcoholic Beverages

The commission proposes amendments to §45.109 for clarity and conciseness and to formalize marketing practices standards currently laid out in agency advisories by adopting them into commission rules.

##### §45.110 Inducements

The commission proposes amendments to §45.110 to increase the cap on the value of food, beverages, entertainment, and recreation provided from \$500 to \$1,000 per person per occasion; and authorize upper tier members to provide any type of transportation, not just ground transportation.

##### §45.111 Advertising Signs at Charitable or Civic Events

The commission proposes amendments to §45.111 to remove the requirement that advertising signs at charitable or civic events be received directly by the charity or civic organization and to conform to H.B. 1545, which removed distance restrictions on the placement of signage outside of events.

##### §45.112 Use of Brand Names and Insignia

The commission proposes amendments to §45.112 to conform to the consolidation of beer and ale and changes to permit types in H.B. 1545; to clarify a provision related to menu cards advertising malt beverages; and to adopt into agency rules current

agency standards regarding menu cards advertising wine or distilled spirits.

#### §45.120 Co-Packaging of Alcoholic Beverage

The commission proposes amendments to §45.120 to conform to the consolidation of beer and ale and changes to permit types in H.B. 1545; and to remove the price differential calculation from the co-pack pricing rule and replace it with a reference to the applicable statutory standard.

#### Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed new and amended rules will be in effect, they are not expected to have a significant fiscal impact upon the agency. Implementation will be performed using existing agency resources. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed new and amended rules. The rules do not impact fees or fines that can be collected by another state or local government nor do they impose additional regulatory obligations on other units of government. Implementation of changes necessitated by H.B. 1545 (2019) was previously funded by the Texas Legislature.

#### Rural Communities Impact Assessment

The proposed new rules and amendments will not have any material adverse fiscal or regulatory impacts on rural communities. Likewise, the proposed rules will not adversely affect a local economy in a material way. The new and amended rules apply statewide and do not impact rural communities in any manner different from urban ones or any local economy in a manner different from other local economies or the state's economy.

#### Small Business and Micro-Business Assessment/Flexibility Analysis

No material fiscal implications are anticipated for small or micro-businesses due to the proposed new and amended rules. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

#### Takings Impact Assessment

The proposed new rule and amendments do not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

#### Public Benefits and Costs

Ms. Horton has determined that for each year of the first five years that the proposed new and amended rules would be in effect, the public would benefit from the updated rules conforming to statutory changes. The proposed amended rules would increase transparency into agency standards, decrease confusion, and lead to greater compliance with the agency's rules. There is no increase in costs to the public.

#### Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed new and amended rules. The analysis addresses the first five years the proposed new and amended rules would be in effect. The proposed new and amended rules neither create nor eliminate a government

program. They do not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed new and amended rules requires neither an increase nor a decrease in future legislative appropriations to the commission.

Comments on the proposed new and amended rules may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3498, attention: Shana Horton, or by email to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov). Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed rules on December 20, 2021, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 206-3451.

Amendments to rules §§45.101, 45.105, 45.107, 45.109 - 45.112, and 45.120 and new rule §45.102 are proposed pursuant to the commission's authority in §5.31 of the Code, which allows the commission to prescribe and publish rules necessary to carry out the provisions of the Code; H.B. 1545, 86th Tex. Leg. (R.S. 2019); and/or S.B. 196 and H.B. 1024, 87th Tex. Leg. (R.S. 2021).

The proposed new and amended rules do not impact any other current rules or statutes.

#### §45.101. *Rebates and[-] Coupons [and Premium Stamps].*

(a) No [It shall be unlawful for the holder of a] license or permit holder may [to] give or offer to give to any person [premium stamps or] any [other type of] inducement with the purchase of alcoholic beverages. [The term "premium stamp" is hereby declared to include but not be limited to the following: exchange stamps, trade stamps, green stamps, gold stamps, and cash register premium tapes.]

(b) No [holder of a manufacturing, wholesale, or retail level] license or permit holder may give any rebate or coupon redeemable by the public for the purchase of or for a discount on the purchase of any alcoholic beverage.

(c) No [holder of a manufacturing, wholesale, or retail level] license or permit holder may offer or give away with or without the purchase of any alcoholic beverage, a coupon redeemable for a rebate, cents-off or for any free non-alcoholic beverage item or product that it does not sell. A license or permit holder [retailer, manufacturer, or wholesaler] may, however, offer a discount, rebate, or cents-off coupon on any non-alcohol product, except non-alcohol malt beverages and wines, that it [he] sells if it does not require the purchase of any alcoholic beverage.

(d) None of the above prohibits any retailer from offering a complimentary drink or drink discount as part of a meal package, a hotel package or any airline frequent flier program or in conjunction with any airline ticket purchase, provided, however, that no discount or complimentary beverage shall be brand identified or redeemed by a member of the manufacturing or wholesale tier [wholesaler or manufacturer].

#### §45.102. *Loyalty Programs.*

(a) This section is authorized by and implements Alcoholic Beverage Code §§1.03, 5.31, 102.07, 102.15 and 108.04. This section applies only to members of the retail and manufacturing tiers who are authorized to sell directly to consumers.

(b) For purposes of this section, a loyalty program is defined as a marketing program that offers certain incentives to encourage customer retention. It does not include the use of coupons.

(c) The holder of a manufacturer or wholesale tier license or permit may not directly or indirectly reimburse a retailer for a loyalty program.

(d) Retailers and holders of a manufacturing tier licenses or permits who are authorized to sell directly to consumers may offer a loyalty program subject to the conditions in this subsection.

(1) A manufacturer authorized to sell directly to consumers may only award loyalty program purchase points, benefits or incentives to the consumer in conjunction with transactions directly between the manufacturer and consumer. Any purchases of the manufacturer's products through a retailer shall not be credited to the loyalty program.

(2) The loyalty program may give consumers discounts on the purchase of alcoholic beverages and on non-alcoholic beverage products or items sold directly to the consumer by the manufacturer or retailer.

(3) The loyalty program may have a point accrual and redemption component in addition to discounts. Accrued points may be redeemed on alcoholic beverages and on non-alcoholic beverage products or items sold directly to the consumer by the manufacturer or retailer.

(4) If the license or permit holder is authorized to sell alcoholic beverages for on-premises consumption, the license or permit holder may not give or offer to give the consumer any alcoholic beverage in a manner that conflicts with §45.103 of this chapter (relating to On-Premises Promotions).

*§45.105. Advertising.*

(a) Retailer Establishments.

(1) This subsection relates to Alcoholic Beverage Code §§108.07, 108.51, and 108.52.

(2) Except as provided in this subsection (a)(3) of this section [paragraph], retail-tier license and permit holders may not advertise any price for an alcoholic beverage on any sign, billboard, marquee, or other display located on the retailer's premises in such a manner that the price may be read by persons outside of the premises. [It is an exception to the restriction in this paragraph if the holder of a food and beverage certificate places a menu on the exterior wall of the premises so that it can be read outside of the premises only by a pedestrian in close proximity to the menu. In order to qualify for the exception granted in this paragraph, the menu visible outside of the premises must be of the same size and in the same sized font as the menu presented to the establishment's customers; and must show both food and beverage prices. ]

(3) It is an exception to the restriction in subsection (a)(2) of this section if:

(A) the holder of a food and beverage certificate places a menu on the exterior wall of the premises so that it can be read outside of the premises only by a pedestrian close to the menu. To qualify for the exception granted in this paragraph, the menu visible outside of the premises must be of the same size and in the same sized font as the menu presented to the establishment's customers, and must show both food and beverage prices; or

(B) the holder of a wine and malt beverage retailer's permit, brewpub license, retail dealer's on-premise license, or a license or permit authorizing sales of alcoholic beverages for pickup under Alcoholic Beverage Code §§28.1001 or 32.155 places a menu in a drive-through lane so that it can be read outside of the premises only by a person in a vehicle in the drive-through lane.

(b) Private Clubs.

(1) This subsection relates to Alcoholic Beverage Code §§32.01(b), 108.51, 108.52 and 108.56.

(2) The holder of a private club registration permit or a private club exemption certificate must, in any advertising either directly or indirectly advertising the service of alcoholic beverages, whether or not by any specific brand name, state that the service of alcoholic beverages is only for persons who are members of the club.

(3) The holder of a private club registration permit or a private club exemption certificate may advertise any class of alcoholic beverages in an area where the sale of that class of alcoholic beverages is legal for on-premises consumption, provided no other provisions of the Alcoholic Beverage Code are violated.

(c) Mobile Advertising.

(1) This subsection relates to Alcoholic Beverage Code §§108.51, 108.52 and 108.54.

(2) Mobile advertising on vehicles is not permitted unless it meets the definition of an "electric sign" in Alcoholic Beverage Code §108.51(3).

(3) Mobile advertising that meets the definition of an "electric sign" in Alcoholic Beverage Code §105.51(3) and that is funded directly or indirectly by upper-tier members may not be parked within 200 feet of a retail location for more than one hour, in order to prevent benefit to the retailer by drawing consumer traffic to the location.

(4) Mobile advertising that meets the definition of an "electric sign" in Alcoholic Beverage Code §108.51(3) may not be parked, maintained in, or driven through an area or zone where the sale of alcoholic beverages is prohibited.

(d) Internet Advertising.

(1) This subsection relates to Alcoholic Beverage Code §§102.07, 102.15 and 108.07.

(2) Retailers may advertise on the internet via their website or through third party advertising, unless the advertising is funded directly or indirectly by an upper-tier member.

(3) All retailer advertising on the internet must conform with the on-premises promotion restrictions of §45.103 of this subchapter (relating to On-Premises Promotions), coupon and inducement restrictions of §45.101 of this subchapter (relating to Rebates and Coupons), and sweepstakes and giveaway restrictions of §45.106 of this subchapter (relating to Sweepstakes and Games of Chance).

*§45.107. Alcoholic Beverages Used [Utilized] for Cooking On Premises [Purposes at On-Premise Locations].*

(a) Wine and Malt Beverage [Beer] On-Premises Retailers.

(1) This subsection is promulgated pursuant to Alcoholic Beverage Code §25.09.

(2) Any alcoholic beverage that is in excess of 17 percent alcohol by volume and is used by wine and malt beverage [beer] on-premises retailers for cooking purposes must be individually labeled as "For Cooking Use Only." ["For Cooking Use Only"].

(3) All alcoholic beverages in excess of 17 percent alcohol by volume used by wine and malt beverage [beer] on-premises retailers for cooking purposes must be stored separately from alcoholic beverages that are legal for sale on the premises by such retailers.

(4) No alcoholic beverage in excess of 17 percent alcohol by volume that is designated by wine and malt beverage [beer] on-premises retailers for cooking purposes may be sold, served, or consumed in liquid form by staff or customers of the retailer.

(5) All receipts for the purchase by wine and malt beverage [beer] on-premises retailers of alcoholic beverages in excess of 17 percent alcohol by volume must be retained on the premises until the bottle is empty and disposed of.

(b) Mixed Beverage Permittees.

(1) This subsection is promulgated pursuant to Alcoholic Beverage Code §28.06.

(2) Alcoholic beverages used for cooking purposes may be purchased by a mixed beverage permittee from a local distributor's permittee[;] or may be purchased at retail from a licensed retailer. All receipts for the purchase of alcoholic beverages used for cooking purposes and purchased by a mixed beverage permittee at retail without a tax stamp must be retained on the premises until the bottle is empty and disposed of.

(3) An alcoholic beverage used for cooking purposes and purchased by a mixed beverage permittee at retail without a tax stamp must be individually labeled as "For Cooking Use Only." [~~"For Cooking Use Only"~~].

(4) All alcoholic beverages used for cooking purposes and purchased by a mixed beverage permittee at retail without a tax stamp must be stored separately from alcoholic beverages purchased from a local distributor's permittee.

(5) No alcoholic beverage used for cooking purposes and purchased by a mixed beverage permittee at retail without a tax stamp may be sold, served or consumed in liquid form by staff or customers of the permittee.

§45.109. *Restocking and Rotation of Alcoholic Beverages.*

(a) General.

(1) This rule is enacted pursuant to §102.20 and Chapter 105 of the Alcoholic Beverage Code.

(2) This rule applies to members of the wholesale tier and those members of the manufacturing tier authorized to sell to retailers for all beverages.

(b) Restocking. Licensees and permittees subject to this rule may, at retail premises, with permission of the retailer, stock, rotate, affix prices, and reset or rearrange alcoholic beverages they sell, provided products of other industry members are not altered or disturbed.

(c) At retail premises, with permission of the retailer, licensees [Licensees] and permittees subject to this rule may[;] at retail premises, with permission of the retailer, organize and construct displays of alcoholic beverages they sell. Notwithstanding the provisions of subsection (b) of this section, products of other industry members, arranged in floor or end cap displays, may be moved, with the permission of the retailer, in order to perform the services allowed by this subsection. Displays constructed under this subsection must be accessible to the consumer.

(1) organize and construct displays accessible by the consumer of alcoholic beverages they sell;

(2) move products of other industry members that are arranged in displays accessible to the consumer (e.g., floor or end cap displays) in order to perform the services allowed by this subsection. Movement of products under this subsection is not considered restocking under subsection (b) of this section; and

(3) provide retailers with temporary display enhancement items such as televisions and grills, which may be used only for product promotion. Temporary display enhancement items must be returned to the manufacturer or wholesale tier member that provided it as soon as practicable after the display is dismantled.

(d) The activities permitted by subsections (b) and (c) of this section may only be performed during the hours when the sale or delivery of specific alcoholic beverages are legal and may also be performed for malt beverages and wine from 5:00 a.m. to 12:00 noon on Sunday.

(e) Licensees and permittees subject to this rule may provide shelf plans or schematics to retailers.

(f) The activities permitted by subsections (b) and (c) of this section must be proportional to the retailer's business volume and demand.

(g) Except for time spent in the standard delivery process and additional service time prescribed by the distributor under subsection (h) of this section, restocking and other merchandising services performed by a distributor that exceed 40 hours per week per retail premises shall constitute an impermissible service or thing of value under Chapter 102 of the Alcoholic Beverage Code. Delivery, pre-sale, and product-ordering activities are not considered merchandising for purposes of this subsection.

(h) In special circumstances such as major holidays, new product rollouts, and major events, only the distributor may determine whether and how much additional service time beyond 40 hours per premises per week is reasonably necessary for activities permitted by subsections (b) and (c) of this section.

§45.110. *Inducements.*

(a) General. This section is enacted pursuant to Alcoholic Beverage Code §§102.04, 102.07, 102.12, 102.15 and 108.06.

(b) Unless otherwise specified, this section applies to members of the manufacturing and wholesale tiers for all alcoholic beverages.

(c) Inducements. Notwithstanding any other provision of these rules, practices and patterns of conduct that place retailer independence at risk constitute an illegal inducement as that term is used in the Alcoholic Beverage Code. Examples of unlawful inducements are:

(1) purchasing or renting shelf, floor or warehouse space from or for a retailer;

(2) requiring a retailer to purchase one product in order to be allowed to purchase another product at the same time;

(3) providing or purchasing, in whole or in part, any type of advertising benefitting any specific retailer, if the advertising is a result of unauthorized activity;

(4) furnishing food and beverages, entertainment or recreation to retailers or their agents or employees except under the following conditions:

(A) the value of food, beverages, entertainment and recreation shall not exceed \$1,000.00 [~~\$500.00~~] per person on any one occasion; and

(B) food, beverages, entertainment and recreation provided may only be consumed or enjoyed in the immediate presence of

both the providing upper tier member and the receiving retail tier member; and

(C) in the course of providing food, beverages, entertainment or recreation under this rule, upper tier members may ~~only~~ furnish ~~ground~~ transportation; ~~and~~[-]

(D) food, beverages, recreation and entertainment may also be provided during attendance at a convention, conference, or similar event so long as the primary purpose for the attendance of the retailer at such event is not to receive benefits under this section; ~~and~~[-]

(E) each upper tier member shall keep complete and accurate records of all expenses incurred for retailer entertainment for two years.

(5) furnishing of service trailers with equipment to a retailer;

(6) furnishing transportation or other things of value to organized groups of retailers. Members of the manufacturing and ~~wholesale~~ ~~distribution~~ tiers may advertise in convention programs, sponsor functions or meetings and other participate in meetings and conventions of trade associations of general membership; ~~and~~ ~~or~~

(7) except as otherwise allowed under §45.41 ~~§45.96~~ of this chapter ~~(relating to (Additional Reasons for Denial of Registration of a Malt Beverage Product), marking, branding or labeling a malt beverage with:~~

(A) the tradename or trademark of any retailer permittee or licensee or any private club registration permittee; or

(B) a tradename or trademark that is owned, ~~or~~ licensed, ~~by~~, or ~~is~~ exclusively used by any retailer permittee or licensee or any private club registration permittee.

(d) Criteria for determining retailer independence. The following criteria shall be used as a guideline in determining whether a practice or pattern of conduct places retailer independence at risk. The following criteria are not exclusive, nor does a practice need to meet all criteria in order to constitute an inducement.

(1) The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.

(2) The retailer is obligated to participate in a program offered by a member of the manufacturing or wholesale tier in order to obtain that member's product.

(3) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.

(4) The retailer has a commitment not to terminate its relationship with a member of the manufacturing or wholesale tier with respect to purchase of that member's products.

(5) The practice involves a member of the manufacturing or wholesale tier in the day-to-day operations of the retailer. For example, the member controls the retailer's decisions on which brand of product to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.

(6) The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

#### *§45.111. Advertising Signs at Charitable or Civic Events.*

(a) This rule is enacted pursuant to §108.53(d) of the Alcoholic Beverage Code.

(b) At a charitable or civic event of a temporary nature, members of the alcoholic beverage industry may place signs or other advertising materials indicating their participation in, or sponsorship of, the charitable or civic event.

(c) It is the intent of this rule that any proceeds from signs advertising alcoholic beverages be received ~~directly~~ by the charity or civic endeavor.

(d) ~~Notwithstanding any other provision of the Alcoholic Beverage Code, signs at a charitable or civic event of a temporary nature may be within 200 feet of the licensed premises of a retailer of alcoholic beverages.~~ No consideration of any kind may be given directly or indirectly, in any form or degree, to any retailer for the placement of any sign.

#### *§45.112. Use of Brand Names and Insignia ~~by Industry~~.*

(a) This section is promulgated pursuant to Alcoholic Beverage Code~~[-]~~ §§102.07 and 108.03.~~§102.07 and §108.03.~~

(b) Advertising of an alcoholic beverage on caps, regalia, or uniforms worn by an employee of a license or permit holder in the manufacturing or distribution tier is ~~manufacturer, distributor, distiller or winery,~~ shall be limited to:

(1) the name and address of the license or permit holder ~~manufacturer, distributor, distiller or winery~~; and

(2) the brand names, logos, and slogans that appear on the container labels approved by the executive director ~~administrator~~ for such alcoholic beverage.

(c) Advertising of an alcoholic beverage on caps, regalia, or uniforms worn by a participant in any game, sport, athletic contest or revue, when the participant is sponsored by a brewer ~~manufacturer~~, distributor, distiller, or winery, ~~is~~ ~~shall be~~ limited to:

(1) the name and address of the brewer ~~manufacturer~~, distributor, distiller, or winery; and

(2) the brand names, logos, and slogans that appear on the container labels approved by the executive director ~~administrator~~ for such alcoholic beverage.

(d) Business cards and stationery bearing brand insignia may be used by licensees and permittees ~~except~~ ~~who are not~~ retail licensees and permittees. Such business cards and stationery may contain:

(1) the name and address of the user;

(2) the name and address of the firm represented;

(3) the brand insignia of any alcoholic beverage that ~~which~~ the firm represents or the user is licensed to sell; and

(4) any other logo, slogan, or trademark that appears on the approved label for such alcoholic beverage, or which slogan or trademark has otherwise been approved by the executive director ~~administrator~~.

(e) Advertising of alcoholic beverages on the equipment or ~~[-]~~ service or delivery vehicles of a member of the manufacturing or wholesale tiers is ~~tier shall be~~ limited to the brand names or logos of the alcoholic beverages sold or represented by the manufacturer, local distributor, or wholesaler;~~[-]~~ firm names and addresses of the manufacturer, local distributor, or wholesaler;~~[-]~~ and ~~such~~ slogans ~~as have been~~ approved by the executive director ~~administrator~~.

(f) Menu cards, folders, or sheets advertising malt beverages ~~beer, ale or malt liquor~~ may be sold ~~furnished~~ to a holder of a retail license or permit by a brewer or brewpub authorized to sell directly to retailers or by a distributor as promotional items in accordance with

limitations set forth in §45.113(c) of this subchapter (relating to Gifts, Services and Sales). [an upper-tier member, if such menu cards, folders or sheets, at the time of their delivery to the retailer, do not list any food or drink item offered for sale by the retailer. The holder of the retail license or permit shall bear all costs of listing any such food or drink item on the menu cards, folders or sheets.] The holder of the retail license or permit shall bear all costs of listing any food item on the menu cards, folders, or sheets unless the food item is mentioned as part of a recommended food and drink pairing.

(g) Menu cards, folders, or sheets advertising wine or distilled spirits may be furnished, as an advertising specialty, to a holder of a retail license or permit by a member of the manufacturing or wholesale tier. Printing costs of such menu cards, folders, or sheets may not exceed the applicable advertising specialty limitations set forth in §45.117 of this subchapter (relating to Gifts and Advertising Specialties). The holder of the retail license or permit shall bear all costs of listing any food item on the menu cards, folders, or sheets unless the food item is mentioned as part of a recommended food and drink pairing.

§45.120. *Co-Packaging of Alcoholic Beverage.*

(a) This section relates to Alcoholic Beverage Code §§102.07(a)(5) and 108.035. [§102.07(a)(5) and §108.035-]

(b) As used in this section:

(1) "Co-pack" means a package:

(A) originally bundled and supplied by a [manufacturer,] distiller, brewer, rectifier, wholesaler, class B wholesaler, nonresident seller, or winery [or wine bottler] (or an agent, employee or servant of any of them [such]);

(B) containing an alcoholic beverage and another item;

(C) where the package is designed to be delivered intact to the ultimate consumer; and

(D) where the additional items have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales.

(2) "Naked bottle" means an alcoholic beverage sold by a wholesaler that is similar in all regards to the alcoholic beverage contained in a co-pack sold by that wholesaler, except that it is not packaged with any other item.

(c) If any alcoholic beverage is sold to a retailer as a "co-pack," [co-pack,] the retailer may not separate the other packaged item and sell it by any means other than the way it was originally packaged when received.

(d) A [In order to demonstrate that a non-alcoholic beverage item in a co-pack has no unlawful value or benefit to the retailer, a] retailer must price and sell a co-pack at a cost that complies with Alcoholic Beverage Code §§102.07(a)(5) and 108.035, as applicable [price differential not to exceed the cost/price differential at which the retailer prices and sells a naked bottle received from the same wholesaler].

(e) Nothing in this section precludes [shall preclude] a supplier from differentiating in the price of a naked bottle and co-pack during the packaging phase of a co-pack by adding cost to the co-pack and increasing the baseline price of the co-pack.

(f) A retailer may not be forced, induced or persuaded to purchase a prescribed number of co-packs in order to purchase naked bottles, nor may a retailer be forced, induced or persuaded to purchase a prescribed number of naked bottles in order to purchase co-packs.

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 16, 2021.

TRD-202104587

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 206-3451

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**TITLE 22. EXAMINING BOARDS**

**PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS**

**CHAPTER 78. SCOPE OF PRACTICE**

**22 TAC §78.1**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §78.1 (Scope of Practice). As part of the Board's comprehensive rule revision effort, the overall purpose of the repeal is to make the Board's rules simpler and easier to navigate.

The Board will propose a new §78.1 in a separate rulemaking. The Board will also propose to repeal and replace §78.2 (Prohibitions on the Scope of Practice) and propose a new §78.9 (Instrumented Vestibular-Ocular-Nystagmus Testing) to accommodate the reorganization of the new §78.1. These rulemaking actions are to improve the readability and organization of the Board's rules; there are no substantive changes to the effect of the Board's current rules. None of these proposed rule change the current chiropractic scope of practice in Texas.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §78.1. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.



- (2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed repeal does not require a decrease or increase in fees paid to the Board.
- (5) The proposed repeal does not create a new regulation.
- (6) The proposal repeals existing Board rules for an administrative process.
- (7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.1525, which requires the Board to adopt necessary rules to clarify the chiropractic scope of practice.

No other statutes or rules are affected by this proposed repeal.

*§78.1. Scope of Practice.*

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 19, 2021.

TRD-202104657

Christopher Burnett  
General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 305-6700



**22 TAC §78.1**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §78.1 (Scope of Practice). As part of the Board's comprehensive rule revision effort, the overall purpose of the new rule is to make the Board's rules simpler and easier to navigate. The Board will also propose to repeal and replace §78.2 (Prohibitions on the Scope of Practice) and propose a new §78.9 (Instrumented Vestibular-Ocular-Nystagmus Testing) to accommodate the reorganization of the new §78.1.

These rulemaking actions are to improve the readability and organization of the Board's rules; there are no substantive changes to the effect of the Board' current rules relating to the scope of

practice. While the Board does have the authority to clarify the chiropractic scope of practice under Texas Occupations Code §201.1525, the Board does not have the authority to expand that scope by rule. The chiropractic scope of practice is determined solely by statute and other applicable law, including *Texas Board of Chiropractic Examiners v. Texas Medical Association*, 616 S.W.3d 558 (Tex. 2021).

Specifically, the proposed new rule strikes superfluous overly-technical language from the current rule, which licensees and others found confusing and unnecessary. It also removes out-of-date language referring to requirements for radiological procedures (updated language for which may be found in current §78.5). The Board further strikes language referring to the specific requirements to perform instrumented vestibular-ocular-nystagmus testing (VONT), which will be moved into a stand-alone rule (new §78.9). The proposed new §78.1 also removes language referring to the prohibition on chiropractors using surgical or invasive procedures, which will be moved into a new §78.2 (Prohibitions on the Scope of Practice).

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §78.1. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

- (1) The proposed rule does not create or eliminate a government program.
- (2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed rule does not require a decrease or increase in fees paid to the Board.
- (5) The proposed rule does not create a new regulation.
- (6) The proposal rule does not repeal existing Board rules for an administrative process.
- (7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us);

or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.1525, which requires the Board to adopt necessary rules to clarify the chiropractic scope of practice.

No other statutes or rules are affected by this proposed rule.

§78.1. Scope of Practice.

(a) The scope of chiropractic practice in Texas is defined by Texas Occupations Code Chapter 201 and other applicable law.

(b) "Musculoskeletal system" means the system of muscles, tendons, ligaments, bones, joints, and their associated tissues and nerves that move the body and maintain its form.

(c) "Subluxation" means an alteration of a body's joint or motion segment which may affect the body's alignment, movement integrity, or physiological function, and which may influence the body's biomechanical and neural integrity.

(d) "Subluxation complex" means a neuromusculoskeletal condition involving an aberrant relationship between the body's adjacent articular structures that may alter their biomechanics or neuro-physiology or that of other articular structures or body systems.

(e) A licensee shall examine, diagnose, and treat a patient only for the purpose of improving the biomechanics, neural integrity, and any subluxations of the patient's musculoskeletal system, and any subluxation complexes that may exist in the patient.

(f) A licensee shall perform all examinations and evaluations necessary to diagnose a patient's biomechanical condition.

(g) To provide therapeutic care for a patient, a licensee may use:

- (1) adjustments and manipulations;
- (2) physical and rehabilitative procedures;
- (3) acupuncture and other reflex techniques;
- (4) diet and weight control;
- (5) therapeutic lasers;
- (6) durable medical goods and devices;
- (7) homeopathic and botanical medicines and non-prescription drugs; and

(8) other treatments, procedures, and services consistent with the practice of chiropractic.

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 19, 2021.

TRD-202104663

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 305-6700



## 22 TAC §78.9

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §78.9 (Instrumented Vestibular-Ocular-Nystagmus Testing). As part of the Board's comprehensive rule revision effort, the overall purpose of the new rule is to make the Board's rules simpler and easier to navigate.

This rulemaking action is simply taking the language referring to the requirements for a chiropractor to perform instrumented vestibular-ocular-nystagmus testing (VONT) that are in the current §78.1 (Scope of Practice) and placing them in a stand-alone rule. The new rule also cleans up the language for readability and makes it conform to drafting conventions. The new rule does not substantively change the effect of the Board's current rules and does not add or subtract to the current chiropractic scope of practice.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §78.9. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

- (1) The proposed rule does not create or eliminate a government program.
- (2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed rule does not require a decrease or increase in fees paid to the Board.
- (5) The proposed rule does not create a new regulation.
- (6) The proposal rule does not repeal existing Board rules for an administrative process.
- (7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.1525, which requires the Board to adopt necessary rules to clarify the chiropractic scope of practice.

No other statutes or rules are affected by this proposed rule.

§78.9. Instrumented Vestibular-Ocular-Nystagmus Testing.

(a) A licensee may perform technological instrumented vestibular-ocular-nystagmus testing (VONT) only if the licensee:

- (1) holds a current diplomate in chiropractic neurology;
- (2) has completed 150 hours of training in VONT; and
- (3) has passed an examination for vestibular specialty or certification.

(b) A licensee may not delegate the performance of VONT.

(c) A licensee who violates this section is subject to disciplinary action.

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

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

TRD-202104670

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 305-6700



## PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

### CHAPTER 365. LICENSING AND REGISTRATION

#### 22 TAC §365.22

The Texas State Board of Plumbing Examiners (Board) proposes amendments to 22 Texas Administrative Code §365.22, Licensing Procedures for Military Spouses.

#### Background and Justification

This amendment is proposed under the authority of Chapter 55 of the Texas Occupations Code, which requires state agencies to adopt certain rules relating to licensing military service members, military veterans and military spouses. The previous rule addressed only military spouses, whereas this rule will address military service member, military veterans and military spouses.

#### Fiscal Impact on State and Local Government

Lisa G. Hill, Executive Director, has determined that for the first five years the amended rule is in effect, there are no foreseeable economic implications relating to costs or revenues of the state or local governments as a result of enforcing or administering the amendments.

#### Public Benefits

The Executive Director has determined that for each of the first five years the amended rule is in effect, the public benefit anticipated as a result of amending the rule will be streamlining the Board's processes and procedures as they relate to licensing military service members, military veterans and military spouses.

#### Probable Economic Costs to Persons Required to Comply with the Rule

The Executive Director has further determined that for the first five years the amended rule is in effect, there are no substantial costs anticipated for persons required to comply with the rule.

#### One-for-One Rule Analysis

Given the rule does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or local government, the Board asserts proposal and adoption of the amended rule is not subject to the requirements of Government Code §2001.0045.

#### Government Growth Impact Statement

For each of the first five years the amended rule is in effect, the agency has determined the following: (1) the amended rule does not create or eliminate a government program; (2) implementation of the amended rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the amended rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule does not require an increase or decrease in fees paid to the agency by persons already regulated by the Board; (5) the amended rule does not create a new regulation; (6) the amended rule does not expand existing regulations; (7) the amended rule does increase the number of individuals subject to the amended rule's applicability; and (8) the amended rule does not adversely affect this state's economy.

#### Local Employment Impact Statement

The Executive Director has determined that no local economies are substantially affected by the amended rule, and, as such, the Board is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

#### Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The Executive Director has determined that the amended rule will not have an adverse effect on small or micro-businesses, or rural communities. As a result, the Board asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

#### Takings Impact Assessment

The Board has determined that there are no private real property interests affected by the amended rule; thus, the Board asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

## Environmental Rule Analysis

The Board has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by said §2001.0225, is not required.

## Public Comments

Written comments regarding the amendments may be submitted by mail to Lisa Hill at P.O. Box 4200, Austin, Texas 78765-4200, or by email to rule.comment@tsbpe.texas.gov with the subject line "365.22 Rule Amendment." All comments must be received within 30 days of publication of this proposal.

## Statutory Authority

This amendment is proposed under the authority of Chapter 55 of the Texas Occupations Code, which requires state agencies to adopt certain rules relating to licensing military service members, military veterans and military spouses. This amendment is also proposed under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code.

This proposal affects the Plumbing License Law. No other statute is affected by this proposal.

### §365.22. Licensing Procedures for Military Service Members, Military Veterans and Military Spouses.

(a) Military service members, military veterans and military spouses who held a license issued by the Texas State Board of Plumbing Examiners in the five years preceding their application date will be issued the same license type as that which was previously held.

[(a) The Board may issue an initial license or registration to an applicant who is a military spouse and holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license or registration.]

(b) Military service members, military veterans and military spouses who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state will be issued the same license type as that which is held in the other jurisdiction.

[(b) The Board may reinstate the license or registration of an applicant who is a military spouse if the license or registration was current at some point during the five (5) years preceding the date the application is submitted.]

(c) The board will identify which out-of-state licenses held by military service members, military veterans and military spouses have substantially equivalent licensing requirements on a case by case basis by comparing the out-of-state jurisdiction's requirements at the time the out-of-state license was issued to the board's current requirements.

[(e) After reviewing the credentials of an applicant who meets the criteria set forth in subsections (a) or (b) of this section, the Executive Director may waive any prerequisite for obtaining a license or registration. The Executive Director may also waive a prerequisite if the applicant holds a current license issued by another jurisdiction that has a reciprocity agreement with Texas for the license.]

(d) Military service members, military veterans and military spouses who do not qualify for a license under subsection (a) or (b) of this section may request that the Executive Director review the mili-

tary service member's, military veteran's or military spouse's alternative credentials, including: training, education and experience for the purposes of waiving prerequisites to obtaining a license.

[(d) In addition to any required application(s), an individual who meets the criteria set forth in subsection (a) or (b) of this section, must submit proof that his or her spouse is currently serving on active duty.]

[(e) In lieu of the standard method(s) of demonstrating competency for a particular license, and based on the applicant's circumstances, the Board may use alternative methods when reviewing an application submitted by an individual who meets that criteria set forth in subsection (a) or (b) of this section. The alternative method(s) may take into consideration any combination of the following:]

[(1) education;]

[(2) continuing education;]

[(3) examinations (written and/or practical);]

[(4) letters of good standing;]

[(5) letters of recommendation; ]

[(6) work experience; or]

[(7) other relevant information approved by the Executive Director.]

[(f) Any information requested in connection with an application reviewed using the method described in subsection (e) of this section shall be submitted in a form and manner prescribed by the Board.]

(e) [(g)] The Board shall process an application submitted by a military service member, military veteran or military spouse [an individual who meets the criteria in subsection (a) or (b) of this section and issue the corresponding license or registration] as soon as practicable. Applicants deemed qualified will be issued a license and information on the requirements to renew the license in 12 months.

(f) Licensing and examination fees payable to the board are waived for military service members, military veterans and military spouses as provided by chapter 55 of the Texas Occupations Code. Late fees incurred while on active duty are waived for military service members.

(g) Military spouses who do not wish to obtain a Texas plumbing license may apply, at no cost, for their out-of-state license to be recognized instead by submitting:

(1) proof of Texas residency, including, but not limited to, a copy of the permanent change of station order for the military service member to whom the spouse is married;

(2) a copy of the spouse's military identification card; and

(3) a copy of the out-of-state license showing that it is current and in good standing at the time of their application.

(h) A military spouse's application for out-of-state recognition will be presumed to show their intent to practice in Texas.

(i) If the board determines that the jurisdiction where the military spouse is currently licensed has licensing requirements that are substantially equivalent to the requirements for a Texas license as provided for by subsection (c) of this section, then the military spouse may engage in plumbing in Texas for a maximum of three (3) years from the date of recognition without a Texas license.

(j) Military spouses approved to use their out-of-state license to engage in plumbing in Texas pursuant to section 55.0041 of the Texas

Occupations Code must comply with chapter 1301 of the Texas Occupations Code and all other applicable laws and regulations.

(k) Military service members and military veterans who do not hold a current out-of-state license or who have not held a Texas license in the five (5) years preceding their application may have their military experience credited toward license eligibility and apprenticeship requirements by submitting evidence of:

- (1) verified military service (DD Form 214 or equivalent);
- (2) training in plumbing or a related field; and
- (3) education in plumbing or a related field.

(l) Military service members and military veterans who do not hold a current out-of-state license or who have not held a Texas license in the five (5) years preceding their application must not have a restricted license in another jurisdiction or an unacceptable criminal history to be eligible to sit for an examination for licensure.

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 18, 2021.

TRD-202104631

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 936-5216



## **TITLE 25. HEALTH SERVICES**

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

#### **CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH**

##### **25 TAC §703.26**

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes amendments to 25 Texas Administrative Code §703.26 relating to reimbursement of clinical trial participation costs to grantees, a statutory reference to the Cancer Clinical Trial Participation Program, and non-substantive edits.

##### **Background and Justification**

Section 703.26(f) became effective in September 2021 and relates to the reimbursement of certain costs that are part of a grant recipient's approved budget and incurred by a cancer clinical trial participant. The proposed amendment to §703.26(f)(1) adds parking as a reimbursable clinical trial participation cost. In §703.26(f)(3), the Institute proposes changing the statutory reference of the Cancer Clinical Trial Participation Program ("the Program") to Texas Health and Safety Code Chapter 51. During the 87th regular session, the Legislature redesignated the Program from Chapter 50 to Chapter 51.

In addition, the Institute proposes a new structure to §703.26(e)(15) and a grammatical edit to §703.26(f)(2). Nei-

ther of these proposed amendments change the substance or requirements found in § 703.26.

##### **Fiscal Note**

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

##### **Public Benefit and Costs**

Ms. Doyle has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to enforcing the rule will be ensuring that companies receiving product development grants from the Institute are Texas-based entities and clarifying the process for meeting, maintaining, and documenting that status.

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

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

##### **Government Growth Impact Statement**

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

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

Submit written comments on the proposed rule changes to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than January 3, 2022. The Institute asks parties filing comments to indicate whether they support the rule revision proposed by the Institute and, if the party requests a change, to provide specific text for the proposed change. Parties may submit comments electronically to [kdoyle@cpnit.texas.gov](mailto:kdoyle@cpnit.texas.gov) or by facsimile transmission to (512) 475-2563.

##### **Statutory Authority**

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

and certifies the proposal to be within the Institute's authority to adopt.

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

§703.26. Allowable Costs.

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

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

(2) A cost is allocable if the cost:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) An honorary gift or a gratuitous payment.

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

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

(10) Liability insurance coverage.

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

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

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

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

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

(14) Fees for visa services.

(15) Payments to a subcontractor if the subcontractor working on a Grant Award project employs an individual who is a Relative of the Principal Investigator, Program Director, Company Representative, Authorized Signing Official, or any person designated as Key Personnel for the same Grant Award project (collectively referred to as "affected Relative"), and the Grant Recipient will be paying the subcontractor with Grant Award funds for any portion of the affected Relative's salary or the Relative submits payment requests on behalf of the subcontractor to the Grant Recipient for payment with Grant Award funds. [:]

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

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

~~(A) [(C)] For exceptional circumstances, the Institute's Chief Executive Office may grant an exception to allow payment of Grant Award funds if the Grant Recipient notifies the Institute prior to finalizing the subcontract. The Chief Executive Officer must notify the~~

Oversight Committee in writing of the decision to allow reimbursement for the otherwise unallowable expense.

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

(16) Fundraising.

(17) Tips or gratuities.

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

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

(2) lodging; [,] and

(3) any cost reimbursed under a cancer clinical trial participation program established pursuant to Texas Health and Safety Code Chapter 51 [50] (relating to Cancer Clinical Trial Participation Program).

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

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

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

TRD-202104672

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: January 2, 2022

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



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 350. EARLY CHILDHOOD INTERVENTION SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to Texas Administrative Code (TAC) Title 26, Part 1, Chapter 350, §§350.103, 350.201, 350.203, 350.207, 350.209, 350.215, 350.217, 350.218, 350.233, 350.309, 350.310, 350.313, 350.315, 350.403, 350.409, 350.415, 350.417, 350.501, 350.505, 350.507, 350.617, 350.706, 350.708, 350.811, 350.817, 350.823, 350.1004, 350.1007, 350.1009, 350.1104, 350.1105, 350.1205, 350.1207, 350.1211, 350.1413, 350.1419, 350.1425, 350.1431, and 350.1435.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to increase administrative efficiencies and improve processes for Early Childhood Intervention (ECI) contractors, add requirements related to criminal background checks of ECI service providers, and strengthen transition services for children and families enrolled in ECI.

The proposed changes also contain non-substantive changes that will improve clarity, update references based on the administrative transfer of ECI rules to 26 TAC Chapter 350 and align abbreviations with HHSC rule conventions.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §350.103 adds clarity related to interdisciplinary teams and educational requirements for early intervention specialists, updates references, and brings the rule into alignment with HHSC rule conventions.

The proposed amendments to §§350.201, 350.203, and 350.207 bring the rules into alignment with HHSC rule conventions and update references.

The proposed amendment to §350.209 adds clarity regarding what aspects of the Individualized Family Service Plan (IFSP) must be explained, with whom a complaint is filed, and the language in which a disagreement must be indicated; updates references; and brings the rule into alignment with HHSC rule conventions.

The proposed amendments to §§350.215, 350.217, 350.218, 350.233 and 350.309 update references and bring the rules into alignment with HHSC rule conventions.

The proposed amendment to §350.310 adds requirements related to when an ECI contractor must complete a fingerprint-based criminal background check, updates references and brings the rule into alignment with HHSC rule conventions.

The proposed amendment to §350.313 provide flexibilities related to the credentialing requirements for early intervention specialists (EIS), clarify when contractors must check with HHSC regarding EIS ethical violations, update references, and bring the rule into alignment with HHSC rule conventions.

The proposed amendment to §350.315 provide flexibilities related to the minimum requirements for ECI service coordinators, update references, and bring the rule into alignment with HHSC rule conventions.

The proposed amendments to §§350.403, 350.409, 350.415, 350.417, 350.501, 350.505, 350.507, 350.617, 350.706, 350.708, 350.811, 350.817, and 350.823 update references and bring the rules into alignment with HHSC rule conventions.

The proposed amendment to §350.1004 provide flexibilities related to completion of IFSPs and bring the rule into alignment with federal regulations and HHSC rule conventions.

The proposed amendment to §350.1007 provide flexibilities related to interim IFSPs.

The proposed amendment to §350.1009 update references and bring the rule into alignment with HHSC rule conventions.

The proposed amendment to §350.1104 clarify that ECI services may be provided only to children who are located in Texas at the time of service and bring the rule into alignment with HHSC rule conventions.

The proposed amendment to §350.1105 bring the rule into alignment with HHSC rule conventions.

The proposed amendments to §§350.1205 and 350.1207 strengthen ECI transition services and bring the rule into alignment with HHSC rule conventions.

The proposed amendment to §350.1211 updates references and brings the rule into alignment with HHSC rule conventions.

The proposed amendment to §350.1413 updates references and brings the rule into alignment with HHSC rule conventions.

The proposed amendment to §350.1419 adds a subsection concerning private insurance that is currently in §350.1425, clarifies that contractors must continue to bill for services that are reimbursed, and brings the rule into alignment with HHSC rule conventions.

The proposed amendment to §350.1425 deletes a subsection regarding private insurance that is a proposed addition to §350.1419 and brings the rule into alignment with HHSC rule conventions.

The proposed amendment to §350.1431 updates references and brings the rule into alignment with HHSC rule conventions.

The proposed amendment to §350.1435 updates references and brings the rule into alignment with HHSC rule conventions.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will expand 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, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule applies only to ECI contractors, none of which are small or micro-businesses, or rural communities.

#### 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 do not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Michelle Alletto, Chief Program and Services Officer, has determined that for each year of the first five years the rules are in effect, the public benefit will be increased efficiencies for contractors and improved guidance for contractors to provide seamless service delivery to families.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules do not require changes to current business practices.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC HEARING

A public hearing to receive comments on the proposal was held on November 3, 2021, at 1PM at the John H. Winters Building, 701 W. 51st Street, Public Hearing Room 125, Austin, Texas, 78751. No comments were received.

A second public hearing was held at the HHSC Executive Council meeting on November 18, 2021, at 1PM at the John H. Winters Building, 701 W. 51st Street, Public Hearing Room 125, Austin, Texas, 78751.

Please contact Sharon Stone at [ECI.Policy@hhs.texas.gov](mailto:ECI.Policy@hhs.texas.gov), if you have questions.

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to Sharon Stone at [ECI.Policy@hhs.texas.gov](mailto:ECI.Policy@hhs.texas.gov).

To be considered, comments must be submitted no later than 30 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 the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R037" in the subject line.

#### SUBCHAPTER A. GENERAL RULES

##### 26 TAC §350.103

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 73 of the Texas Human Resources Code, which provides HHSC



with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code Chapter 73.

§350.103. *Definitions.*

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

(1) Assessment--As defined in 34 CFR §303.321(a)(2)(ii), the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility for early childhood intervention (ECI) services to assess the child's individual strengths and needs and determine the appropriate services to meet those needs.

(2) Child--An infant or toddler, from birth through 35 months, as defined in 34 CFR §303.21.

(3) Child Find--As described in 34 CFR §§303.115, 303.302, and 303.303, activities and strategies designed to locate and identify, as early as possible, infants and toddlers with developmental delay.

(4) Complaint--A formal written allegation submitted to the Texas Health and Human Services Commission (HHSC) [~~HHSC~~] stating that a requirement of the Individuals with Disabilities Education Act IDEA [~~;~~] or an applicable federal or state regulation has been violated.

(5) Comprehensive Needs Assessment--Conducted by an interdisciplinary team as defined in paragraph (25) of this section as a part of the Individualized Family Services Plan (IFSP) [~~IFSP~~] development process, the process for identifying a child's unique strengths and needs, and the family's resources, concerns, and priorities in order to develop an IFSP. The comprehensive assessment process gathers information across developmental domains regarding the child's abilities to participate in the everyday routines and activities of the family.

(6) Condition with [~~With~~] a High Probability of Resulting in Developmental Delay--A medical diagnosis known and widely accepted within the medical community to result in a developmental delay over the natural course of the diagnosis.

(7) Consent--As defined in 34 CFR §303.7 and meeting all requirements in 34 CFR §303.420.

(8) Contractor--A local private or public agency with proper legal status and governed by a board of directors or governing authority that accepts funds from HHSC to administer an early childhood intervention program.

(9) Co-visits--When two or more service providers deliver different services to the child during the same period of time. Co-visits are provided when a child will receive greater benefit from services being provided at the same time, rather than individually.

(10) Days--Calendar days, except for local education agency (LEA) [~~LEA~~] services which are defined as "school days."

(11) Developmental Delay--As defined in Texas Human Resources Code §73.001(3) and determined to be significant in compliance with the criteria and procedures in Subchapter H of this chapter (relating to Eligibility, Evaluation, and Assessment).

(12) Developmental Screenings--General screenings provided by the early childhood intervention program to assess the child's need for further evaluation.

(13) Early Childhood Intervention Program--In addition to the definition of early intervention service program as defined in 34 CFR §303.11, a program operated by the contractor with the express

purpose of implementing a system to provide early childhood intervention services to children with developmental delays and their families.

(14) Early Childhood Intervention Services--Individualized early childhood intervention services determined by the IFSP team to be necessary to support the family's ability to enhance their child's development. Early childhood intervention services are further defined in 34 CFR §303.13 and §303.16 and ~~§350.1105~~ [~~§108.1105~~] of this chapter [~~title~~] (relating to Capacity to Provide Early Childhood Intervention Services).

(15) ECI Professional--An individual employed by or under the direction of an HHSC Early Childhood Intervention Program contractor who meets the requirements of qualified personnel as defined in 34 CFR §303.13(c) and §303.31, and who is knowledgeable in child development and developmentally appropriate behavior, possesses the requisite education and experience, and demonstrates competence to provide ECI services.

(16) EIS--Early Intervention Specialist. A credentialed professional who meets specific educational requirements established by HHSC ECI in ~~§350.313(a)~~ of this chapter (relating to Early Intervention Specialist (EIS)) and has specialized knowledge in early childhood cognitive, physical, communication, social-emotional, and adaptive development.

(17) Evaluation--The procedures used by qualified personnel to determine a child's initial and continuing eligibility for early childhood intervention services that comply with the requirements described in 34 CFR §303.21 and §303.321.

(18) FERPA--Family Educational Rights and Privacy Act of 1974, 20 USC §1232g, as amended, and implementing regulations at 34 CFR Part 99. Federal law that outlines privacy protection for parents and children enrolled in the ECI program. FERPA includes rights to confidentiality and restrictions on disclosure of personally identifiable information, and the right to inspect records.

(19) Group Services--Early childhood intervention services provided at the same time to no more than four children and their parent or parents or routine caregivers per service provider to meet the developmental needs of the individual infant or toddler.

(20) HHSC--Texas Health and Human Services Commission. The entity designated as the lead agency by the governor under the Individuals with Disabilities Education Act, Part C. HHSC has the final authority and responsibility for the administration, supervision, and monitoring of programs and activities under this system. HHSC has the final authority for the obligation and expenditure of funds and compliance with all applicable laws and rules.

(21) HHSC ECI--The Texas Health and Human Services Commission Early Childhood Intervention Services. The state program responsible for maintaining and implementing the statewide early childhood intervention system required under the Individuals with Disabilities Education Act, Part C, as amended in 2004.

(22) IFSP--Individualized Family Service Plan as defined in 34 CFR §303.20. A written plan of care for providing early childhood intervention services and other medical, health, and social services to an eligible child and the child's family when necessary to enhance the child's development.

(23) IFSP Services--The individualized early childhood intervention services listed in the IFSP that have been determined by the IFSP team to be necessary to enhance an eligible child's development.

(24) IFSP Team--An interdisciplinary team that meets the requirements in 34 CFR §303.24(b) and [~~(relating to Multidisciplinary)~~ ~~that~~] works collaboratively to develop, review, modify, and approve the

IFSP. It [and] includes the parent; the service coordinator; [ ] all ECI professionals providing services to the child, as planned on the IFSP; [ ] certified Teachers of the Deaf and Hard of Hearing, as appropriate; [ ] and certified Teachers of Students with Visual Impairments, as appropriate.

(25) Interdisciplinary Team--In addition to the definition of multidisciplinary team as defined in 34 CFR §303.24 [~~(relating to Multidisciplinary)~~], a team that consists of at least two ECI professionals from different disciplines and the child's parent. One of the ECI professionals must be a Licensed Practitioner of the Healing Arts (LPHA) [an LPHA]. The team may include representatives of the LEA. Professionals on the team share a common perspective regarding infant and toddler development and developmental delay and work collaboratively to conduct evaluation, assessment, IFSP development and to provide intervention.

(26) LEA--Local educational agency as defined in 34 CFR §303.23.

(27) LPHA--Licensed Practitioner of the Healing Arts. A licensed physician, registered nurse, licensed physical therapist, licensed occupational therapist, licensed speech language pathologist, licensed professional counselor, licensed clinical social worker, licensed psychologist, licensed dietitian, licensed audiologist, licensed physician assistant, licensed marriage and family therapist, licensed intern in speech language pathology, licensed behavior analyst, or advanced practice registered nurse who is an employee or a sub-contractor of an ECI contractor. LPHA responsibilities are further described in §350.312 [§408.312] of this chapter [title] (relating to Licensed Practitioner of the Healing Arts (LPHA)).

(28) Medicaid--The medical assistance entitlement program administered by HHSC.

~~[(29) Natural Environments--As defined in 34 CFR §303.26, settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, includes the daily activities of the child and family or caregiver, and must be consistent with the provisions of 34 CFR §303.126.]~~

(29) [(30)] Native Language--As defined in 34 CFR §303.25.

(A) When used with respect to an individual who is limited English proficient (as that term is defined in section 602(18) of the Individuals with Disabilities Education Act), native language means:

(i) the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child; and

(ii) for evaluations and assessments conducted pursuant to 34 CFR §303.321(a)(5) and (a)(6), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

(B) When used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, "native language" [native language] means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

(30) Natural Environments--As defined in 34 CFR §303.26, settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, includes the daily activities of the child and family or caregiver, and must be consistent with the provisions of 34 CFR §303.126.

(31) Parent--As defined in 20 USC §1401 and 34 CFR §303.27.

(32) Personally Identifiable Information--As defined in 34 CFR §99.3 and 34 CFR §303.29.

(33) Pre-Enrollment--All family-related [family related] activities from the time the referral is received up until the time the parent signs the initial IFSP.

(34) Primary Referral Sources--As defined in 34 CFR §303.303(c).

(35) Public Agency--HHSC and any other state agency or political subdivision of the state that is responsible for providing early childhood intervention services to eligible children under the Individuals with Disabilities Education Act, Part C.

(36) Qualifying Medical Diagnosis--A diagnosed medical condition that has a high probability of developmental delay as determined by HHSC, as described in §350.811 [§408.811] of this chapter (relating to Eligibility Determination Based on Medically Diagnosed Condition That Has a High Probability of Resulting in Developmental Delay).

(37) Referral Date--The date the child's name and sufficient information to contact the family was obtained by the contractor.

(38) Routine Caregiver--An adult who:

(A) has written authorization from the parent to participate in early childhood intervention services with the child, even in the absence of the parent;

(B) participates in the child's daily routines;

(C) knows the child's likes, dislikes, strengths, and needs; and

(D) may be the child's relative, childcare provider, or other person who regularly cares for the child.

(39) Service Coordinator--The contractor's employee or subcontractor who:

(A) meets all applicable requirements in Subchapter C of this chapter (relating to Staff Qualifications);

(B) is assigned to be the single contact point for the family;

(C) is responsible for providing case management services as described in §350.405 [§408.405] of this chapter [title] (relating to Case Management Services); and

(D) is from the profession most relevant to the child's or family's needs or is otherwise qualified to carry out all applicable responsibilities.

(40) Surrogate Parent--A person assigned to act as a surrogate for the parent in compliance with the Individuals with Disabilities Education Act, Part C and this chapter.

(41) Telehealth services--Healthcare services, other than telemedicine medical services, delivered by a health professional licensed, certified, or otherwise entitled to practice in Texas and acting within the scope of the health professional's license, certification, or entitlement to a patient who is located at a different physical location than the health professional using telecommunications or information 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 November 19, 2021.

TRD-202104676

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 438-5031



## SUBCHAPTER B. PROCEDURAL SAFEGUARDS AND DUE PROCESS PROCEDURES

**26 TAC §§350.201, 350.203, 350.207, 350.209, 350.215, 350.217, 350.218, 350.233**

### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code Chapter 73.

#### *§350.201. Purpose.*

The purpose of this subchapter is to describe general requirements for procedural safeguards pertaining to early childhood intervention services. In addition to the requirements described in this subchapter, the contractor must comply with all federal and state requirements related to procedural safeguards and due process pertaining to early childhood intervention services including: 20 USC §§1431 - 1444; 20 USC §1232g; 42 USC §§2000d - 2000d-7; implementing regulations 34 CFR Part 99 and 34 CFR §§303.123, 303.400 - 303.417, 303.421, 303.422, 303.430 - 303.436; and 40 TAC §101.1107 (relating to Administrative Hearings Concerning Individual Child Rights) and 40 TAC §101.1111 [of this title] (relating to [Administrative Hearings Concerning Individual Child Rights and] Appeal of Final Decision). In cases of conflict between this subchapter and the federal authorities, the interpretation must be in favor of the higher safeguards for children and families.

#### *§350.203. Responsibilities.*

(a) The contractor shall be responsible for:

(1) establishing or adopting procedural safeguards that meet the requirements of the federal and state regulations listed in §350.101 [~~§108.101~~] of this chapter [title] (relating to Purpose) and that also meet additional requirements of this subchapter;

(2) implementing the procedural safeguards; and

(3) providing oral and written explanation to the parent regarding procedural safeguards during the pre-enrollment process and at other times when parental consent is required.

(b) The contractor must make reasonable effort to provide appropriate interpreter or translation services in the child's native language as defined in 34 CFR §303.25 or other communication assistance necessary for a parent or child with limited English proficiency or communication impairments to participate in early childhood intervention

services. Interpreter, translation, and communication assistance services are provided at no cost to the family.

(c) The contractor must provide the family the Early Childhood Intervention [ECI] Parent Handbook. The contractor must document the following were explained:

(1) the family's rights;

(2) the early childhood intervention process; and

(3) early childhood intervention services.

#### *§350.207. Parental Consent.*

(a) Written parental consent provides documentation that the parent has been informed of and agrees, in writing, to the proposed action. Consent is voluntary and can be withdrawn by the parent at any time. Any action for which the parent has withdrawn consent must be stopped immediately.

(b) In addition to the requirements in 34 CFR §303.420, written parental consent must be obtained before:

(1) beginning any screening, except when performing a developmental screening on a child in the conservatorship of the Texas Department of Family and Protective Services;

(2) conducting any evaluation or assessment procedures;

(3) providing early childhood intervention services listed in the Individualized Family Service Plan (IFSP) [IFSP];

(4) changing the type, intensity, or frequency of early childhood intervention services;

(5) contacting medical professionals and other outside sources to coordinate and gather information about the child and family;

(6) reporting personally identifiable information, including disposition of referral, electronically to statewide databases unless release is authorized without consent in the Family Education Rights and Privacy Act [FERPA]; or

(7) releasing personally identifiable information except as allowed by §350.241 [~~§108.241~~] of this chapter [title] (relating to Release of Records).

(c) As required by 34 CFR §303.420(b), the contractor must adopt procedures designed to inform the parent of the nature of the recommended assessment or evaluation procedures and recommended early childhood intervention services that the parent has refused. The procedures may include:

(1) providing the parent relevant literature or other materials; and

(2) offering the parent peer counseling to enhance their understanding of the value of early childhood intervention and the inability to participate in the Individuals with Disabilities Education Act, Part C programs without consent.

(d) If a specific assessment or service is determined necessary by the IFSP team, the contractor may not limit or deny that assessment or service because the parent has refused consent for another service or assessment.

#### *§350.209. Parent Rights in the Individualized Family Service Plan (IFSP) [IFSP] Process.*

The contractor must explain the contents of the IFSP to the parents and obtain informed written consent from the parent before providing any early childhood intervention services. The parent has the right to:

(1) be present and participate in the development of the IFSP;

(2) have decisions about early childhood intervention services made based on the individualized needs of the child and family;

(3) receive a full explanation of the IFSP, including the identified strengths and needs of the child and family, priorities of the family, the developmental goals for the child and the recommended services to meet those goals, and any identified service coordination and case management goals;

(4) consent to some, but not all, early childhood intervention services;

(5) receive all IFSP services for which the parent gives consent;

(6) request an administrative hearing or file a complaint with the Texas Health and Human Services Commission if the parent does not agree with the other IFSP team members;

(7) indicate disagreement in writing in the parent's native language with a part of the IFSP, even though the parent consents to early childhood intervention services;

(8) have the IFSP written in the parent's native language, as defined in §350.103 [~~§108.103~~] of this chapter (relating to Definitions), or mode of communication; and

(9) receive a copy of the IFSP.

*§350.215. Early Childhood Intervention (ECI) Procedures for Filing Complaints.*

(a) An individual or organization may file a complaint with the Texas Health and Human Services Commission (HHSC) [~~HHSC~~] alleging that a requirement of the Individuals with Disabilities Education Act, Part C or applicable federal and state regulations has been violated. The complaint must be in writing, be signed, and include the nature of the violation and a statement of the facts on which the complaint is based.

(b) A complaint may be filed directly with HHSC without having been filed with the contractor or local program.

(c) The alleged violation must have occurred not more than one year before the date that the complaint is received by the public agency unless a longer period is reasonable because the alleged violation continues for that child or other children.

(d) Procedures for receipt of a complaint are as follows.

(1) All complaints received by HHSC concerning early childhood intervention services shall be forwarded to the HHSC Director of ECI who will log and assign all complaints, monitor the resolution of those complaints, and maintain a copy of all complaints for a seven-year period.

(2) A complaint should be clearly distinguished from a request for an administrative hearing under Title 40, Chapter 101, Subchapter E, Division 3 [~~of this title~~] (relating to Division for Early Childhood Intervention Services) and from a request for a hearing under §350.227 [~~§108.227~~] of this chapter [~~title~~] (relating to Opportunity for a Hearing) concerning the requirements of the Federal Education Rights and Privacy Act [FERPA].

*§350.217. Procedures for Investigation and Resolution of Complaints.*

(a) After receipt of the complaint, the Texas Health and Human Services Commission (HHSC) [~~HHSC~~] Director of Early Childhood Intervention (ECI) [~~ECI~~] will assign a staff person to conduct an individual investigation, on-site if necessary, to make a recommendation to

the HHSC Director of ECI for resolution of the complaint. The child's and family's confidentiality is protected during the complaint resolution process.

(1) The complainant will have the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(2) All relevant information will be reviewed and an independent determination made as to whether a violation of [~~the~~] the requirements of the Individuals with Disabilities Education Act occurred.

(b) The HHSC Director of ECI will resolve [~~resolves~~] the complaint within 60 days of the receipt date.

(c) An extension of the time limit under subsection (b) of this section shall be granted only if exceptional circumstances exist with respect to a particular complaint.

(d) Complainants shall be informed in writing of the final decision of the HHSC Director of ECI. The HHSC Director of ECI's written decision to the complainant will address each allegation in the complaint and contain:

(1) findings of fact and conclusions; and

(2) reasons for the final decision.

(e) To ensure effective implementation of the HHSC Director of ECI's final decision and to achieve compliance with any corrective actions, the HHSC Director of ECI will assign a staff person to provide technical assistance and appropriate follow-up to the parties involved in the complaint as necessary.

(f) In resolving a complaint in which there is a finding of failure to provide appropriate services, the HHSC Director of ECI will remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and appropriate future provision of services for all infants and toddlers with disabilities and their families.

(g) When a complaint is filed, the HHSC Director of ECI will offer mediation services as an alternative to proceeding with the complaint investigation. Mediation may be used when both parties agree. A parent's right to a due process hearing or complaint investigation will not be denied or delayed because they chose to participate in mediation. The complaint investigation will continue and be resolved within 60 days even if mediation is used as the resolution process.

(h) If a written complaint is received that is also the subject of a request for an administrative hearing under 40 TAC Chapter 101, Subchapter E, Division 3 [~~of this title~~] (relating to Division for Early Childhood Intervention Services) or a request for a hearing under §350.227 [~~§108.227~~] of this chapter [~~title~~] (relating to Opportunity for a Hearing) concerning the requirements of the Federal Education Rights and Privacy Act [FERPA], or contains multiple issues, of which one or more are part of those hearings, the part of the complaint that is being addressed in those hearings is set aside until the conclusion of the hearings. However, any issue in the complaint that is not a part of such action must be resolved within the 60 day timeline using the complaint procedures.

*§350.218. Mediation.*

(a) At any time, a party or all parties to a dispute involving a matter with respect to the provision of appropriate early childhood intervention services or a potential or actual violation of the Individuals with Disabilities Education Act, Part C or other applicable federal or Texas statutes or regulations or rules may request mediation of that dispute by sending the request in writing to the Texas Health and Human

Services Commission (HHSC) [HHSC] Director of Early Childhood Intervention (ECI) [ECI]. A request for mediation must:

- (1) be in writing and signed by the requesting party;
- (2) state the dispute to be mediated with some detail showing it is a matter with respect to the provision of appropriate early childhood intervention services to a particular child or children, or that it is a matter with respect to a potential or actual violation of the Individuals with Disabilities Education Act, Part C or other applicable federal or Texas statutes or regulations or rules;
- (3) name the opposing party or parties and, if they have agreed to mediation, contain their signatures;
- (4) give contact information for all parties to the extent known by the requestor; and
- (5) show that the request for mediation has also been sent to all other parties or that attempts have been made to do so, if possible.

(b) If the request for mediation is also a complaint pursuant to §350.215 [~~§408.215~~] of this subchapter (relating to Early Childhood Intervention Procedures for Filing Complaints), it will be handled both as a complaint and as a request for mediation under subsection (c) of this section. If the request for mediation is also a request for due process hearing, it will be handled both as a request for due process hearing and a request for mediation under subsection (c) of this section. If the request for mediation does not clearly designate itself as a complaint or request for due process hearing, or if it does not comply with the filing requirements for those procedures, it will be handled only as a request for mediation under this section.

(c) If the parties to a request for a due process hearing as described in 40 TAC §101.1107 [~~of this title~~] (relating to Administrative Hearings Concerning Individual Child Rights) agree to mediate the dispute in accordance with 40 TAC §101.947 [~~of this title~~] (relating to Mediation Procedures), those procedures shall apply, but the mediation shall also comply with the requirements of federal regulation 34 CFR §303.431.

(d) If the parties to a complaint filed with HHSC under §350.215 [~~§408.215~~] of this subchapter agree to mediate the dispute in accordance with §350.217 [~~§408.217~~] of this subchapter (relating to Procedures for Investigation and Resolution of Complaints), the procedures in this section apply except for those in subsections (b) and (c) of this section.

(e) If not all parties have agreed to mediation, HHSC will make reasonable efforts to contact the other parties and to give them the opportunity to agree or to decline mediation. If neither HHSC nor the requesting party is able to obtain agreement to mediate by all parties within a reasonable time, HHSC may notify the requesting party and treat the original request for mediation as having been declined by the other party or parties.

(f) The parties may agree to mediate some or all of the disputes described in the request for mediation, and they may amend the disputes to be mediated by agreeing in writing.

(g) If HHSC is not a party to the dispute being mediated, HHSC will not be a party to any mediation resolution agreement and will not sign it, but HHSC may assist in the enforcement of it if requested.

§350.233. Release of Personally Identifiable Information.

(a) Unless authorized to do so under 34 CFR §99.31 or the Uninterrupted Scholars Act (Public Law 112-278), parental consent must be obtained before personally identifiable information is:

(1) disclosed to anyone other than officials or employees of Early Childhood Intervention (ECI) [ECI] participating agencies collecting or using the information; or

(2) used for any purpose other than meeting a requirement under this chapter.

(b) A contractor may request that the parent provide a release to share information with others for legitimate purposes. However, when such a release is sought:

(1) the parent must be informed of their right to refuse to sign the release;

(2) the release form must list the agencies and providers to whom information may be given and specify the type of information that might be given to each;

(3) the parent must be given the opportunity to limit the information provided under the release and to limit the agencies, providers, and persons with whom information may be shared. The release form must provide ample space for the parent to express in writing such limitations;

(4) the release must be revocable at any time;

(5) the consent to release information form must have a time limit:

(A) not to exceed seven years after the child exits services or other applicable record retention period, as described in §350.237 [~~§408.237~~] of this subchapter (relating to Record Retention Period) for billing records; or

(B) not to exceed one year for all other consents to release information; and

(6) if the parent refuses to consent to the release of all or some personally identifiable information, the program will not release the information.

(c) The contractor may disclose personally identifiable information without prior written parental consent if the disclosure meets one or more of the following conditions:

(1) the disclosure is to another Texas Health and Human Services Commission (HHSC) [HHSC] ECI contractor during a transfer of services;

(2) the disclosure is restricted to limited personal identification, as defined in §350.1203 [~~§408.1203~~] of this chapter (relating to Definitions), being sent to the Local Education Agency (LEA) [LEA] for child find purposes, unless the parent opted-out of the notification in accordance with §350.1213 [~~§408.1213~~] of this chapter (relating to LEA Notification Opt Out);

(3) the disclosure is to the Texas Department of Family and Protective Services for the purpose of reporting or cooperating in the investigation of suspected child abuse or neglect;

(4) the disclosure is in response to a court order or subpoena;

(5) the disclosure is to a federal or state oversight entity, including:

(A) United States Department of Health and Human Services, or its designee;

(B) Comptroller General of the United States, or its designee;

(C) Office of the State Auditor of Texas, or its designee;

(D) Office of the Texas Comptroller of Public Accounts;

(E) Medicaid Fraud Control Unit of the Texas Attorney General's Office, or its designee;

(F) HHSC, including:

(i) Office of Inspector General;

(ii) Managed Care Organization [MCO] Program personnel from HHSC, or designee;

(iii) any other state or federal entity identified by HHSC, or any other entity engaged by HHSC; and

(iv) any independent verification and validation contractor, audit firm or quality assurance contractor acting on behalf of HHSC;

(G) state or federal law enforcement agency; or

(H) State of Texas Legislature general or special investigating committee or its designee; or

(6) the disclosure meets the requirements of the Uninterrupted Scholars Act, which provides that:

(A) the disclosure is to a caseworker or other representative of a State or local child welfare agency or tribal organization authorized to access the child's case plan;

(B) the child is in foster care and the child welfare agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student; and

(C) the disclosure must pertain to addressing the educational [education] needs of the child.

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. STAFF QUALIFICATIONS

### 26 TAC §§350.309, 350.310, 350.313, 350.315

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code Chapter 73.

§350.309. *Minimum Requirements for All Direct Service Staff.*

(a) The contractor must comply with the Texas Health and Human Services Commission (HHSC) Early Childhood Intervention (ECI) [HHSC ECI] requirements related to health regulations for all direct service staff. The contractor must comply with 34 CFR Part 85 and Texas Health and Safety Code[;] Chapter 81.

(b) The contractor must comply with HHSC ECI requirements related to initial training requirements for direct service staff. Before providing services, all staff must:

(1) complete orientation training as required by HHSC ECI. This requirement does not apply to staff employed by the Local Education Agency (LEA) [LEA];

(2) hold current certification in first-aid and cardiopulmonary resuscitation for children and infants; and

(3) complete universal precautions training.

(c) The contractor must comply with HHSC ECI requirements related to continuing education requirements for direct service staff. All staff providing early childhood intervention services to children and families must maintain current certification in first aid and cardiopulmonary resuscitation for children and infants.

(d) The contractor must verify that all newly employed staff, except staff employed by the LEA:

(1) are qualified in terms of education and experience for their assigned scopes of responsibilities;

(2) are competent to perform the job-related activities before providing early childhood intervention services; and

(3) complete orientation training as required by HHSC ECI before providing early childhood intervention services.

(e) The contractor must comply with HHSC ECI requirements related to supervision of direct service staff. A contractor must implement a system of supervision and oversight that consists of consultation, record review, and observation from a qualified supervisor. The intent of supervision is to provide oversight and direction to staff. Supervisor qualifications are further described [in this subchapter] in §350.313(c) [~~§108.313(e)~~] and §350.315(d) [~~§108.315(d)~~] of this subchapter (relating to Early Intervention Specialist (EIS) and Service Coordinator, respectively).

(1) Consultation means evaluation and development of staff knowledge, skills, and abilities in the context of case-specific problem solving.

(2) Record review means a review of documentation in child records to evaluate compliance with the requirements of this chapter, and quality, accuracy, and timeliness of documentation. It also includes feedback to staff to identify areas of strength and areas that need improvement.

(3) Observation means watching staff interactions with children and families to provide guidance and feedback and providing guidance and feedback about the observation.

(f) The contractor must follow all training requirements defined by HHSC ECI.

#### §350.310. *Criminal Background Checks.*

(a) The contractor must complete a fingerprint-based criminal background check on every new hire [any employee], volunteer, or other person who will be working under the auspices of the contractor before the person has direct contact with children or families, including employees who have had a fingerprint-based check as a requirement of their professional licensure. [The purpose of completing the criminal

background check is to protect children and families and to comply with Medicaid and HHSC Child Care Licensing requirements.]

(b) The contractor must complete a fingerprint-based criminal background check renewal on any employee, or any other person who will be working under the auspices of the contractor who has direct contact with children or families, at least every 24 months, unless the contractor uses Federal Bureau of Investigations (FBI) Rap Back and gets alerts of any new arrests and convictions. Employees who are covered by the FBI Rap Back service must complete fingerprint-based criminal background checks at least every five years. Employees deemed "unfingerprintable" by the Texas Department of Public Safety or other fingerprinting entity must have a name-based background check completed every 24 months. If at any time a contractor has reason to suspect an employee has been convicted of a crime specified in §745.661 of this title (relating to What types of criminal convictions may affect a subject's ability to be present at an operation?), they must complete a fingerprint-based criminal background check renewal on the employee in question.

(c) [(b)] The contractor must ensure that all therapists providing Medicaid services for Early Childhood Intervention [ECI] children are correctly enrolled with the Texas Medicaid Program. This requirement includes disclosing all criminal convictions and arrests as required by 1 TAC §371.1005 (relating to Disclosure Requirements). The Texas Health and Human Services Commission (HHSC) [HHSC] Office of Inspector General may recommend denial of an enrollment or re-enrollment based on criminal history, in accordance with 1 TAC §371.1011 (relating to Recommendation Criteria).

(d) [(e)] HHSC Child Care Licensing maintains three charts of criminal history requirements for people who regularly enter licensed child care facilities.

(1) The three charts are published on the HHSC website:

(A) Licensed or Certified Child Care Operations: Criminal History Requirements;

(B) Foster or Adoptive Placements: Criminal History Requirements; and

(C) Registered Child Care Homes and Listed Family Homes: Criminal History Requirements.

(2) The contractor must review each employee's criminal background check to ensure that staff members who regularly enter regulated child care facilities or foster homes to provide early childhood intervention services do not have criminal convictions that would result in an absolute bar to entering them in compliance with §745.661 of this title [the 40 TAC §745.651 (relating to What types of criminal convictions may affect a person's ability to be present at an operation?)].

(e) [(d)] If a criminal background check reveals criminal convictions that are not on the HHSC Child Care Licensing charts of criminal history requirements or would result in the individual being eligible for a HHSC Child Care Licensing risk assessment, the program director may conduct a risk assessment. The risk assessment process must include, at a minimum, consideration of:

(1) the number of convictions;

(2) the nature and seriousness of the crime;

(3) the age of the individual at the time the crime was committed;

(4) the relationship of the crime to the individual's fitness or capacity to serve in the role of an early childhood intervention professional;

(5) the amount of time that has elapsed since the person's last conviction; and

(6) any relevant information the individual provides or otherwise demonstrates.

§350.313. Early Intervention Specialist (EIS).

(a) The contractor must comply with the Texas Health and Human Services Commission (HHSC) Early Childhood Intervention (ECI) [HHSC ECI] requirements related to minimum qualifications for an EIS.

(1) An EIS must meet one of the following criteria [either]:

(A) [(+)] be registered as an EIS before September 1, 2011; [or]

(B) hold a bachelor's or graduate degree from an accredited university with a bachelor or graduate degree specialization in:

(i) early childhood development;

(ii) early care and early childhood;

(iii) early childhood special education; or

(iv) human development and family studies;

(C) hold a bachelor's or graduate degree from an accredited university in a field related to early childhood intervention. For each of the following fields, transcripts of degree coursework must reflect successful completion of at least nine semester course credit hours relevant to early childhood intervention and three semester course credit hours that focus on early childhood development or early childhood special education. Related fields include:

(i) psychology;

(ii) social work;

(iii) counseling;

(iv) special education (without early childhood emphasis); and

(v) sociology;

(D) hold a bachelor's or graduate degree from an accredited university in a field unrelated to early childhood intervention. For fields unrelated to early childhood intervention, transcripts of degree coursework must reflect successful completion of at least 15 semester course credit hours relevant to early childhood intervention and three semester course credit hours that focus on early childhood development or early childhood special education; or

(E) hold a bachelor's or graduate degree from an accredited university with three years of experience within the last ten years working for an Individuals with Disabilities Education Act, Part C program in the United States or a United States territory providing special instruction, as defined in 34 CFR §303.13(b)(14), or specialized skills training, as defined in §350.501(a)(4) of this chapter, to infants and toddlers with developmental delays or disabilities and their families.

[(2) hold a bachelor's degree which includes a minimum of 18 hours of semester course credit relevant to early childhood intervention, with at least three of the 18 hours of semester course credit in early childhood development or early childhood special education.]

(2) [(A)] If an EIS has not completed the required three hours of semester course credit in early childhood development or early childhood special education provided in paragraph (1)(C) and (D) of this subsection, the EIS must complete forty clock hours of continuing education in early childhood development or early childhood special education within three years prior to employment as an EIS. The EIS

must complete these hours before the EIS is entered in the EIS Registry. [Forty clock hours of continuing education in early childhood development or early childhood special education completed within three years prior to employment as an EIS may substitute for the three hour semester course credit requirement in early childhood development or early childhood special education. The EIS must complete these hours before the EIS is entered in the EIS Registry.]

(3) ~~(B)~~ Coursework or previous training in early childhood development or early childhood special education is required to ensure that an EIS understands the development of infants and toddlers because the provision of specialized skills training [SST] for which an EIS is solely responsible depends on significant knowledge of typical child development. Therefore, the content of the three hours of coursework described in paragraph (1)(C) and (D) of this subsection, and the forty clock hours of continuing education described in paragraph (2) of this subsection ~~[or training]~~ must relate to the growth, development, and education of the young child and may include courses or training in:

- (A) ~~(i)~~ child growth and development;
- (B) ~~(ii)~~ child psychology;
- (C) ~~(iii)~~ children with special needs; or
- (D) ~~(iv)~~ typical language development.

(b) The contractor must comply with HHSC ECI requirements related to continuing education for an EIS. An EIS must complete:

- (1) a minimum of 20 contact hours of approved continuing education every two years; and
- (2) an additional three contact hours of continuing education in ethics every two years.

(c) The contractor must comply with HHSC ECI requirements related to supervision of an EIS.

(1) The contractor must provide an EIS supervision as defined in §350.309(e) [~~§408.309(e)~~] of this chapter ~~[title]~~ (relating to Minimum Requirements for All Direct Service Staff) as required by HHSC ECI.

(2) An EIS supervisor must:

(A) have two years of experience providing ECI services, or 2 [~~two~~] years of experience supervising staff who provide other early childhood intervention services to children and families; and

(B) be an active EIS or hold a bachelor's degree or graduate degree from an accredited university with a specialization in:

(i) child development, special education, psychology, social work, sociology, nursing, rehabilitation counseling, human development, or related field; or

(ii) an unrelated field and have at least 18 hours of semester course credit in child development.

(d) Requirements for EIS active status and EIS inactive status are as follows.[:]

(1) Only an EIS with active status is allowed to provide early childhood intervention services to children and families. An EIS on inactive status may not perform activities requiring the EIS active status.

(2) An EIS goes on inactive status when:

(A) the EIS fails to submit the required documentation by the designated deadline.

(i) Orientation to ECI training must be completed within 30 days, from the EIS's start date.

(ii) If an EIS is transferring from another program, the Orientation to ECI training must be completed within 30 days from the EIS's start date unless the EIS has documentation he or she has completed the current Orientation module.

(iii) All credentialing activities (Final Individualized Professional Development Plan [IPDP]) must be completed within one year from the EIS's start date.

(iv) If, due to exceptional circumstances, an EIS is unable to submit documentation of completion of credentialing activities by the designated due date, the EIS's supervisor must contact the HHSC ECI EIS credentialing specialist as soon as he or she is aware the due date will not be met. The credentialing specialist and his or her supervisor will work with the EIS's supervisor and the EIS to determine an appropriate course of action.

~~(B)~~ the EIS fails to submit documentation of required continuing education and ethics training by the designated deadline. An EIS may return to active status from inactive status by submitting the required documentation in accordance with subsection (b) of this section.

~~(C)~~ ~~(B)~~ the EIS is no longer employed by a contractor. An ~~[; an]~~ EIS may return to active status from inactive status by:

(i) submitting 10 contact hours of continuing education for each year of ~~[every continuing education due date that was missed while the EIS was on]~~ inactive status; and

(ii) submitting documentation of three contact hours of ethics training within the last two years.

(3) An EIS who has been on inactive status for longer than 24 months from his or her first missed continuing education submission date must complete all credentialing activities.

(4) EIS active status is considered reinstated after the information is entered into the EIS Registry and is approved by HHSC ECI.

(e) The contractor must comply with HHSC ECI requirements related to ethics for an EIS. An EIS who violates any of the standards of conduct in §350.314 [~~§408.314~~] of this subchapter (relating to EIS Code of Ethics) is subject to the contractor's disciplinary procedures. Additionally, the contractor must complete an EIS Code of Ethics Incident Report in the EIS Registry ~~[and send a copy to HHSC ECI]~~.

(f) Contractors must contact the HHSC ECI state office when hiring a new EIS to verify if an EIS Code of Ethics Incident Report has been recorded in the EIS Registry.

§350.315. *Service Coordinator.*

(a) Early Childhood Intervention (ECI) [ECI] case management may only be provided by an employee or subcontractor of an ECI contractor. The contractor must comply with the Texas Health and Human Services Commission (HHSC) [~~HHSC~~] ECI requirements related to minimum qualifications for service coordinators.

(1) A service coordinator must meet one of the following criteria:

(A) be a licensed professional in a discipline relevant to early childhood intervention;

(B) be an Early Intervention Specialist (EIS) or meet the qualifications for an EIS as defined in §350.313 of this subchapter ~~[EIS]~~;



(C) be a Registered Nurse (with a diploma, an associate's, bachelor's or advanced degree) licensed by the Texas Board of Nursing; or

(D) hold a bachelor's degree or graduate degree from an accredited university with a specialization in:

(i) child development, special education, psychology, social work, sociology, nursing, rehabilitation counseling, or human development or a related field; or

(ii) an unrelated field with at least 18 hours of semester course credit in child development or human development.

(2) Before performing case management activities, a service coordinator must complete HHSC ECI required case management training that includes, at a minimum, content which results in:

(A) knowledge and understanding of the needs of infants and toddlers with disabilities and their families;

(B) knowledge of [Part C] of the Individuals with Disabilities Education Act, Part C;

(C) understanding of the scope of early childhood intervention services available under the early childhood intervention program and the medical assistance program; and

(D) understanding of other state and community resources and supports necessary to coordinate care.

(3) A service coordinator must complete all assigned activities on the service coordinator's Individualized Professional Development Plan [IPDP] within one year from the service coordinator's start date.

(4) A service coordinator must effectively communicate in the family's native language or use an interpreter or translator.

(b) A service coordinator who was employed as service coordinator by a contractor before March 1, 2012<sup>[5]</sup> and does not meet the requirements of subsection (a)(1) of this section may continue to serve as a service coordinator at the contractor's discretion.

(c) The contractor must comply with HHSC ECI requirements related to continuing education for service coordinators. A service coordinator must complete:

(1) three contact hours of training in ethics every two years;

(2) an additional three contact hours of training specifically relevant to case management every year; and

(3) if the service coordinator does not hold a current license or credential that requires continuing professional education, an additional seven contact hours of approved continuing education every year.

(d) The contractor must comply with HHSC ECI requirements related to supervision of service coordinators.

(1) A contractor's supervision of service coordinators must meet the requirements outlined in §350.309(c) [~~§108.309(e)~~] of this subchapter (relating to Minimum Requirements for All Direct Service Staff).

(2) A contractor's ECI program staff member who meets the following criteria is qualified to supervise a service coordinator:

(A) has completed all service coordinator training as required in subsection (a)(2) and (a)(3) of this section;

(B) has two years of experience providing case management in an ECI program or another applicable community-based organization; and

(C) is an active EIS or holds a bachelor's degree or graduate degree from an accredited university with a specialization in:

(i) child development, special education, psychology, social work, sociology, nursing, human development or a related field; or

(ii) an unrelated field with at least 18 hours of semester course credit in child development or human development.

(e) Requirements for service coordinator active status and inactive status are as follows.

(1) A service coordinator is on inactive status when the service coordinator fails to complete required training activities by the designated deadlines in subsections (a) and (c) of this section. Service coordinator active status is reinstated after the required training activities are completed and approved by the service coordinator's supervisor.

(2) A service coordinator is on inactive status when the service coordinator is no longer employed by a contractor.

(A) A service coordinator returns to active status when the service coordinator:

(i) is employed by an ECI program within 24 months or less from the last day of employment;

(ii) submits 10 clock hours of continuing education for every year of inactive status; and

(iii) submits documentation of three clock hours of ethics training completed within the last two years and not used to meet previous training requirements.

(B) A service coordinator who has been on inactive status for longer than 24 months must complete the training requirements outlined in subsections (a)(2) and (a)(3) of this section.

(f) The contractor must comply with HHSC ECI requirements related to ethics of service coordinators. Service coordinators must meet the established rules of conduct and ethics training required by their license or credential. A service coordinator who does not hold a license or credential must meet the rules of conduct and ethics established in §350.314 [~~§108.314~~] of this subchapter (relating to EIS Code of Ethics).

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. CASE MANAGEMENT FOR INFANTS AND TODDLERS WITH DEVELOPMENTAL DISABILITIES

26 TAC §§350.403, 350.409, 350.415, 350.417

## STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code Chapter 73.

### §350.403. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Case management**--In compliance with §350.405 [§108.405] of this subchapter (relating to Case Management Services), case management means services provided to assist an eligible child and their family in gaining access to the rights and procedural safeguards under the Individuals with Disabilities Education Act (IDEA), Part C, and to needed medical, social, educational, developmental, and other appropriate services. Case management services may be provided via telehealth with the prior written consent of the parent. If the parent declines to consent to telehealth services, case management must still be provided.

(2) **Developmental disability**--Children from birth to age three who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

(3) **Monitoring and assessment**--Activities and contacts as described in §350.405 [§108.405] of this subchapter [(relating to Case Management Services)] that are necessary to ensure that the individualized family service plan (IFSP), as described in Subchapter J of this chapter (relating to Individualized Family Service Plan (IFSP)), is effectively implemented and that the planned services adequately address the needs of the child.

(4) **Service coordinator**--An employee or person under the direction of an Early Childhood Intervention (ECI) [ECI] contractor who meets the criteria described in Subchapter C of this chapter (relating to Staff Qualifications).

(5) **Targeted case management**--Case [ease] management activities that are reimbursable by Medicaid when provided to Medicaid-enrolled children who are eligible for ECI.

(6) **Texas Health Steps**--The name adopted by the State of Texas for the federally mandated Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program.

### §350.409. Conditions for Case Management Provider Agency Participation.

In order to be reimbursed for services specified in §350.405 [§108.405] of this subchapter (relating to Case Management Services), a provider must:

(1) be an Early Childhood Intervention contractor of the Texas Health and Human Services Commission [HHSC];

(2) comply with all applicable federal and state laws and regulations governing the services provided;

(3) ensure that services are provided by qualified staff as specified in Subchapter C of this chapter (relating to Staff Qualifications); and

(4) be responsible for the service coordinator's compliance with this subchapter.

### §350.415. Documentation.

(a) The child's record must include:

(1) whether the parent has declined recommended services;

(2) the need for, and occurrences of, coordination with other service coordinators or case managers; and

(3) whether case management goals have been achieved.

(b) Documentation of each case management contact must include:

(1) name of the child;

(2) name of the Early Childhood Intervention [ECI] contractor;

(3) name of the assigned service coordinator;

(4) date, start time, and duration of the contact;

(5) physical location of the service coordinator at the time of contact (e.g., office, child's home, hospital, daycare);

(6) method of service (face-to-face [face to face] or telephone);

(7) with whom the contact was made (e.g., parent, routine caregiver, physician);

(8) a description of the case management activity performed as described in §350.405 [§108.405] of this subchapter (relating to Case Management Services);

(9) course of action to respond to identified needs;

(10) any relevant information provided by the family, or other individual or entity; and

(11) service coordinator's signature.

### §350.417. Due Process.

(a) **Medicaid-eligible individuals.** Any Medicaid-eligible individual whose request for eligibility for case management is denied or is not acted upon with reasonable promptness, or whose case management has been terminated, suspended, or reduced is entitled to a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules).

(b) **All individuals.** If an Early Childhood Intervention [ECI] contractor denies, involuntarily reduces, or terminates case management for an individual, the individual has all rights to file complaints, request mediation, or request a hearing in accordance with Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures) and in accordance with 40 TAC Chapter 101, Subchapter E, Division 3 [of this title] (relating to Division for Early Childhood Intervention Services).

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. SPECIALIZED REHABILITATIVE SERVICES

### 26 TAC §§350.501, 350.505, 350.507

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code Chapter 73.

#### §350.501. *Specialized Rehabilitative Services.*

(a) Specialized rehabilitative services are rehabilitative services that promote age-appropriate development by correcting deficits and teaching compensatory skills for deficits that directly result from medical, developmental, or other health-related conditions. Specialized rehabilitative services include physical therapy, speech language pathology services, occupational therapy, and specialized skills training.

(1) Physical therapy.

(A) Physical therapy services are defined in 34 CFR §303.13(b)(9).

(B) Physical therapy services must meet the requirements of subsection (b) of this section.

(C) Physical therapy services must be provided by a licensed physical therapist who meets the requirements of 42 CFR §440.110(a) and all other applicable state and federal laws or a licensed physical therapy assistant (LPTA) when the assistant is acting under the direction of a licensed physical therapist in accordance with 42 CFR §440.110 and all other applicable state and federal laws.

(2) Speech language pathology services.

(A) Speech language pathology services are defined in 34 CFR 303.13(b)(15).

(B) Speech therapy services must meet the requirements of subsection (b) of this section.

(C) Speech therapy services must be provided by:

(i) a licensed speech language pathologist (SLP) who meets the requirements of 42 CFR §440.110(c) and all other applicable state and federal laws;

(ii) a licensed assistant in SLP when the assistant is acting under the direction of a licensed SLP in accordance with 42 CFR §440.110 and all other applicable state and federal laws; or

(iii) a licensed intern when the intern is acting under the direction of a qualified SLP in accordance with 42 CFR §440.110 and all other applicable state and federal laws.

(3) Occupational therapy.

(A) Occupational therapy services are defined in 34 CFR §303.13(b)(8).

(B) Occupational therapy services must meet the requirements of subsection (b) of this section.

(C) Occupational therapy services must be provided by a licensed occupational therapist who meets the requirements of 42 CFR §440.110(b) and all other applicable state and federal laws or a certified occupational therapy assistant (COTA) when the assistant is acting under the direction of a licensed occupational therapist in accordance with 42 CFR §440.110 and all other applicable state and federal laws.

(4) Specialized skills training.

(A) Specialized skills training seeks to reduce the child's functional limitations across developmental domains including, strengthening the child's cognitive skills, positive behaviors, and social interactions.

(B) Specialized skills training includes skills training and anticipatory guidance for family members or other routine caregivers to ensure effective treatment and to enhance the child's development.

(C) Specialized skills training services must meet the requirements of subsection (b) of this section.

(D) Specialized skills training must be provided by an Early Intervention Specialist.

(b) Specialized rehabilitative services must:

(1) be designed to create learning environments and activities that promote the child's acquisition of skills in one or more of the following developmental areas: physical/motor, communication, adaptive, cognitive, and social/emotional;

(2) be provided in the child's natural environment, as defined in 34 CFR §303.26 [Part 303], unless the criteria listed at 34 CFR §303.126 are met and documented in the case record and may be provided via telehealth with the prior written consent of the parent, and if the parent does not consent to telehealth services, will be provided in person;

(3) meet the requirements of §350.1104 [§108.1104] of this chapter (relating to Early Childhood Intervention Services Delivery); and

(4) be provided on an individual or group basis.

(c) In addition to the criteria in subsection (b) of this section, group services must meet the requirements as described in §350.1107 [§108.1107] of this chapter (relating to Group Services for Children).

(d) Service Authorization.

(1) Specialized rehabilitative services must be recommended by an interdisciplinary team that includes a licensed practitioner of the healing arts and be documented in an Individualized Family Service Plan (IFSP) in accordance with Subchapter J of this chapter (relating to Individualized Family Service Plan (IFSP)).

(2) Services must be monitored by the interdisciplinary team as described in §350.1104 [§108.1104] of this chapter [(relating to Early Childhood Intervention Services Delivery)].

(e) Documentation. Documentation of each specialized rehabilitative services contact must meet the requirements in §350.1111

[§108.1111] of this chapter (relating to Service Delivery Documentation Requirements).

§350.505. *Conditions for Provider Agency Participation.*

To be reimbursed for services specified in §350.501 [§108.501] of this subchapter (relating to Specialized Rehabilitative Services), a contractor must:

- (1) comply with applicable federal and state laws and regulations governing the services provided;
- (2) ensure that services are provided by an Early Childhood Intervention (ECI) [ECI] professional as defined in §350.103 [§108.103] of this chapter (relating to Definitions); and
- (3) be responsible for the ECI professional's compliance with this subchapter.

§350.507. *Due Process.*

(a) Medicaid-eligible individuals. Any Medicaid-eligible individual whose request for eligibility for specialized rehabilitative services is denied or is not acted upon with reasonable promptness, or whose specialized rehabilitative services has been terminated, suspended, or reduced is entitled to a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules).

(b) All individuals. If an Early Childhood Intervention [ECI] contractor denies, involuntarily reduces, or terminates specialized rehabilitative services for an individual, the individual has all rights to file complaints, request mediation, or request a hearing in accordance with Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures) and in accordance with 40 TAC Chapter 101, Subchapter E, Division 3 [of this title] (relating to Division for Early Childhood Intervention Services [Appeals and Hearing Procedures]).

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. PUBLIC OUTREACH**

**26 TAC §350.617**

**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 Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code Chapter 73.

§350.617. *Public Outreach Contact, Planning, and Evaluation.*

(a) The contractor must inform the Texas Health and Human Services Commission (HHSC) Early Childhood Intervention (ECI) [HHSC ECI] of the person to contact regarding public outreach efforts.

(b) The contractor must establish goals, strategies, and activities to meet the requirements of this subchapter. This strategic planning process must include the review and incorporation of any major HHSC ECI policy change concerning the types of information described in §350.609(b) [§108.609(b)] of this subchapter (relating to Child Find).

(c) The strategic planning process must be coordinated with other contractors that share counties and primary referral sources.

(d) The public outreach strategic planning process must include an evaluation of the success of the contractor's public outreach efforts with a focus on the:

- (1) number of children referred to the ECI program;
- (2) percentage of children referred that are determined eligible for the program;
- (3) percentage of children determined eligible that enroll in the program;
- (4) data in paragraphs (1), (2), and (3) of this subsection broken down by age, race, and ethnicity at referral; referral source; and eligibility type; and
- (5) plans to address issues found in the evaluation of public outreach efforts.

(e) The contractor must be prepared to describe this strategic planning process and its outcomes to HHSC ECI upon request.

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 G. REFERRAL, PRE-ENROLLMENT, AND DEVELOPMENTAL SCREENING**

**26 TAC §350.706, §350.708**

**STATUTORY AUTHORITY**

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code Chapter 73.

§350.706. *Referrals Received While the Child is in the Hospital.*

(a) In order to facilitate discharge planning and provide continuity of care, a contractor may accept referrals for children who are residing in a hospital at the time of referral.

(b) If a referral is received for a child who has an adjusted age of zero [9] months or less[,] or who has a qualifying medical diagnosis, the contractor may choose to determine eligibility and complete the initial Individualized Family Service Plan (IFSP) [IFSP] prior to the child's discharge from the hospital.

(1) The interdisciplinary team who determines eligibility may include a licensed or registered hospital professional, who will serve as the Licensed Practitioner of the Healing Arts (LPHA) [LPHA] while the child is in the hospital. The LPHA on the IFSP team may participate by means other than face to face, if acceptable to the team and if the initial IFSP is conducted while the child is in the hospital.

(2) The interdisciplinary team must include at least one Early Childhood Intervention [ECI] professional and a licensed or registered hospital professional who is familiar with the needs of the child and knowledgeable in the area or areas of concern. The participating licensed or registered hospital professional is not required to complete the orientation training required in §350.309(b) [~~§108.309(b)~~] of this chapter (relating to Minimum Requirements for All Direct Service Staff). Allowable licensed or registered hospital professionals include:

- (A) licensed physician;
- (B) registered nurse;
- (C) licensed physical therapist;
- (D) licensed occupational therapist;
- (E) licensed speech language pathologist;
- (F) licensed dietitian;
- (G) licensed audiologist;
- (H) licensed physician assistant;
- (I) licensed intern in speech language pathology; or
- (J) advanced practice registered nurse.

§350.708. *Pre-Enrollment Activities.*

(a) Pre-enrollment begins at the point of referral, includes the following activities, and ends when the parent signs the Individualized Family Service Plan (IFSP) [IFSP] or a final disposition is reached.

(1) The contractor must assign [assigns] an initial service coordinator for the family and document [documents] the name of the service coordinator in the child's record.

(2) The contractor must provide [provides] the family the Texas Health and Human Services Commission Early Childhood Intervention [HHS ECI] Parent Handbook and document [documents] in the child's record that the following were explained to the parent:

- (A) the family's rights regarding eligibility determination and enrollment;
- (B) the early childhood intervention process for determining eligibility and enrollment; and
- (C) the types of early childhood intervention services that may be delivered to the child and the manner in which they may be provided.

(3) The contractor must provide [provides] pre-IFSP service coordination as defined in 34 CFR §303.13(b)(11) and §303.34.

(4) The contractor must collect [collects] information on the child throughout the pre-enrollment process.

(5) The contractor must assist [assists] the child and family in gaining access to the evaluation and assessment process, including:

- (A) scheduling the interdisciplinary initial evaluation and assessment; and
- (B) preparing the family for the evaluation and assessment process.

(6) The contractor must comply [complies] with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures).

(b) The contractor must explain to the family, before eligibility determination, the requirement to provide early childhood intervention services in the natural environment.

(c) The contractor must determine the need for and appoint a surrogate parent in accordance with 34 CFR §303.422 and §350.213 [~~§108.213~~] of this chapter (relating to Surrogate Parents).

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## SUBCHAPTER H. ELIGIBILITY, EVALUATION, AND ASSESSMENT

### 26 TAC §§350.811, 350.817, 350.823

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code Chapter 73.

§350.811. *Eligibility Determination Based on Medically Diagnosed Condition That Has a High Probability of Resulting in Developmental Delay.*

(a) To determine eligibility for a child who has a qualifying medical diagnosis the interdisciplinary team must review medical documentation to determine initial eligibility.

(b) The Texas Health and Human Services Commission (HHSC) [HHSC] Director of Early Childhood Intervention [ECI] approves the list of qualifying medical conditions based on prevailing medical opinion that the diagnoses have a high probability of resulting

in developmental delay. Copies of the list of medically qualifying diagnoses can be obtained from HHSC.

(c) If a review of the child's records indicates that the child has a qualifying medical condition, the interdisciplinary team must determine and document a need for early childhood intervention services as required in §350.837 [§108.837] of this chapter [title] (relating to Needs Assessment).

§350.817. *Eligibility Determination Based on Developmental Delay.*

(a) The contractor must:

(1) comply with all requirements in 34 CFR §303.321(b) [(relating to Procedures for Evaluation of the Child)];

(2) maintain all test protocols and other documentation used to determine eligibility and continuing eligibility in the child's record;

(3) provide prior written notice to the parent when the child is determined to be ineligible for early childhood intervention services; and

(4) ensure that all evaluations are conducted by qualified personnel.

(b) The parent and at least two professionals from different disciplines must conduct the evaluation to determine initial and continuing eligibility based on developmental delay as defined by §350.809(3) [§108.809(3)] of this chapter [title] (relating to Initial Eligibility Criteria). A Licensed Practitioner of the Healing Arts [An LPHA] must be one of the two professionals. Service coordination is not considered a discipline for evaluation. The evaluation procedures must include:

(1) administration of the standardized tool designated by the Texas Health and Human Services Commission (HHSC) Early Childhood Intervention (ECI) [HHSC ECI];

(2) taking the child's history, including interviewing the parent;

(3) identifying the child's level of functioning in each of the developmental areas in 34 CFR §303.21(a)(1);

(4) gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs;

(5) reviewing medical, educational, and other records; [and]

(6) in addition to 34 CFR §303.321(b), determining the most appropriate setting, circumstances, time of day, and participants for the evaluation in order to capture the most accurate picture of the child's ability to function in his or her natural environment; and

(7) interpreting scores and determining delay through the application of informed clinical opinion to test results.

(c) The contractor must consider other evaluations and assessments performed by outside entities when requested by the family.

(1) The contractor must determine whether outside evaluations and assessments:

(A) are consistent with HHSC ECI policies;

(B) reflect the child's current status; and

(C) have implications for Individualized Family Service Plan [IFSP] development.

(2) If the family does not allow full access to those records or to those entities or does not consent to or does not cooperate in evaluations or assessments to verify their findings, the contractor may discount or disregard the other evaluations and assessments performed by outside entities.

§350.823. *Continuing Eligibility Criteria.*

(a) The contractor must determine the child's eligibility for continued early childhood intervention services at least annually if the child is younger than 21 months of age at the previous eligibility determination. A child who is determined eligible at 21 months of age or older remains eligible for Early Childhood Intervention (ECI) [ECI] until the child's third birthday or until the child has reached developmental proficiency, whichever happens first.

(b) The contractor must comply with all requirements in 34 CFR §303.321(a)(3), including ensuring that informed clinical opinion may be used as an independent basis to establish a child's continued eligibility.

(1) Continuing eligibility is based on one of the following:

(A) a qualifying medical diagnosis confirmed by a review of the child's medical records with:

(i) interdisciplinary team documentation of the continued need for early childhood intervention services; and

(ii) documentation in the child's record of any change in medical diagnosis;

(B) an auditory or visual impairment as defined by the Texas Education Agency in 19 TAC §89.1040 (relating to Eligibility Criteria) with:

(i) interdisciplinary team documentation of the continued need for early childhood intervention services; and

(ii) documentation in the child's record of any change in hearing or vision status; or

(C) a developmental delay determined by the administration of the standardized tool designated by the Texas Health and Human Services Commission (HHSC) [HHSC] ECI, with the child demonstrating a documented delay of at least 15 percent in one or more areas of development, including the use adjusted age as specified in §350.819 [§108.819] of this subchapter (relating to Age Adjustment for Children Born Prematurely), as applicable.

(2) Continuing eligibility for a child whose initial eligibility was based on a qualitative determination of developmental delay must be determined after six months.

(A) Eligibility is re-determined through an evaluation using the standardized tool designated by HHSC ECI.

(B) The child must demonstrate a documented delay of at least 15 percent [15%] in one or more areas of development. If applicable, use adjusted age as specified in §350.819 [§108.819] of this subchapter.

(c) If the parent fails to consent or fails to cooperate in re-determination of eligibility, the child becomes ineligible. The contractor must send prior written notice of ineligibility and consequent discontinuation of all ECI services to the family at least 14 days before the contractor discharges the child from the program, unless the parent:

(1) immediately consents to and cooperates in all necessary evaluations and assessments; and

(2) consents to all or part of a new Individualized Family Service Plan [IFSP].

(d) The family has the right to oppose the actions described in subsection (c) of this section using their procedural safeguards including the rights to use local and state complaint processes, request mediation, or request an administrative hearing in accordance with 40 TAC §101.1107 [of this title] (relating to Administrative Hearings Concerning Individual Child Rights).

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## SUBCHAPTER J. INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

### 26 TAC §§350.1004, 350.1007, 350.1009

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code Chapter 73.

§350.1004. *Individualized Family Service Plan (IFSP) [IFSP] Development.*

(a) The IFSP team must develop a written initial IFSP within 45 days from the date the Texas Health and Human Services Commission (HHSC) Early Childhood Intervention (ECI) [HHSC ECI] receives a referral on a child unless the child or parent is unavailable due to exceptional family circumstances documented in the child's record. The IFSP must be [is] completed during a face-to-face meeting with the family in accordance with 20 USC §1436 and 34 CFR §§303.340 - 303.346.

(b) The IFSP must be developed based on evaluation and assessment of a child as described in 34 CFR §303.321 and Subchapter H of this chapter (relating to Eligibility, Evaluation, and Assessment). An IFSP must address the developmental needs of the child and the case management needs of the family as identified in the comprehensive needs assessment, unless the family declines to address a specified need.

(c) A contractor must provide a parent with a copy of the IFSP, as required by 34 CFR §303.405 and §303.409[;] and maintain the original IFSP in the child's record.

(d) A contractor must deliver early childhood intervention services according to the IFSP.

(e) An IFSP team must conduct a periodic review of the IFSP at least every six months in accordance with 34 CFR §303.342.

(f) An IFSP meeting must be conducted at least annually, if the child was younger than 21 months of age on the date of the previous initial or annual IFSP meeting, to evaluate and revise, as appropriate, the IFSP for a child and the child's family in accordance with 34 CFR §303.342. The meeting may be conducted by a method other than face-to-face if:

(1) approved by the parent;

(2) the contractor has a plan approved by HHSC for conducting annual IFSP meetings by a method other than face-to-face when appropriate for the child and family; and

(3) the contractor documents how the Licensed Practitioner of the Healing Arts' [LPHA's] observations and conclusions of the re-evaluation of the child were communicated and incorporated into the IFSP.

(g) If the child was 21 months of age or older on the date of the previous initial or annual IFSP, the IFSP team must conduct a periodic review that meets the requirements in §350.1017 of this subchapter (relating to Periodic Review).

(h) [(g)] Documentation in the child's record must reflect compliance with related state and federal requirements.

(i) [(h)] The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures) during the IFSP process.

§350.1007. *Interim Individualized Family Service Plan (IFSP) [IFSP].*

(a) An interim IFSP may be [is] developed for an eligible child and family who need supports and services to begin immediately. Early Childhood Intervention (ECI) [ECI] services may begin before completing an evaluation and assessment if the following conditions are met:

(1) parental consent is obtained;

(2) the interim IFSP includes the name of the assigned service coordinator;

(3) the interim IFSP includes the services that have been determined to be needed immediately; and

(4) the evaluation, assessment, and initial IFSP are completed within the 45-day timeframe in accordance with 34 CFR §303.310.

(b) An annual interim IFSP may be developed for an eligible child and family who need supports and services to continue when exceptional family circumstances prevent the team from completing all required components of the annual meeting to evaluate the IFSP in accordance with §350.1019 of this subchapter (relating to Annual Meeting to Evaluate the IFSP). ECI services may continue if the following conditions are met:

(1) parental consent is obtained;

(2) the interim IFSP is in accordance with 34 CFR § 303.342;

(3) the interim IFSP includes the name of the assigned service coordinator;

(4) the interim IFSP includes the services that have been determined to be needed; and

(5) the evaluation, assessment, and all required components of the annual meeting to evaluate the IFSP must be completed within 45 days of the date the annual review of the IFSP was due.

§350.1009. Participants in Initial and Annual Individualized Family Service Plan (IFSP) [IFSP] Meetings.

(a) The initial IFSP meeting and each annual meeting to evaluate the IFSP must be conducted by the IFSP team as defined in 34 CFR §303.343(a) [(relating to IFSP Team meeting and periodic review)].

(b) The initial IFSP meeting and the annual meeting to evaluate the IFSP must be conducted by an interdisciplinary team that includes, at a minimum, the parent and at least two professionals from different disciplines or professions.

(1) At least one professional must be an Early Childhood Intervention (ECI) [ECI] service coordinator.

(2) At least one professional must be a Licensed Practitioner of the Healing Arts (LPHA) [an LPHA].

(3) At least one ECI professional must have been involved in conducting the evaluation. This may be the service coordinator, the LPHA, or a third professional.

(4) If the LPHA attending the IFSP meeting did not conduct the evaluation, the contractor must ensure that the most recent observations and conclusions of the LPHA who conducted the evaluation were communicated to the LPHA attending the initial IFSP meeting and incorporated into the IFSP.

(5) Other team members may participate by other means acceptable to the team.

(c) With parental consent, the contractor must also invite to the initial IFSP meeting and annual meetings to evaluate the IFSP:

(1) Early Head Start and Migrant Head Start staff members, if the family is jointly served; and

(2) representatives from other agencies serving or providing case management to the child or family, including Medicaid managed care programs.

(d) If a child has a documented:

(1) auditory impairment as described in §350.813(a) [§108.813(a)] of this chapter (relating to Determination of Hearing and Auditory Status), the IFSP team for an initial IFSP meeting and annual IFSP evaluation meetings must include a certified teacher of the deaf and hard of hearing; or

(2) visual impairment as described in §350.815(a) [§108.815(a)] of this chapter (relating to Determination of Vision Status), the IFSP team for an initial IFSP meeting and annual IFSP evaluation meetings must include a certified teacher of the visually impaired.

(e) Unless there is documentation that the Local Education Agency [LEA] has waived notice, the contractor must:

(1) provide the certified teacher required in subsection (d) of this section at least a 10-day written notice before the initial IFSP meeting, any annual meetings to evaluate the IFSP or any review and evaluation that affects the child's auditory or vision services; and

(2) keep documentation of the notice in the child's ECI record.

(f) The IFSP team cannot plan auditory or vision services or make any changes that affect those services if the certified teacher required in subsection (d) of this section is not in attendance.

(g) The IFSP team must route the IFSP to the certified teacher required in subsection (d) of this section for review and signature when changes to the IFSP do not affect the child's auditory or vision services.

(h) The certified teacher of the deaf and hard of hearing and the certified teacher of the visually impaired required in subsection (d) of this section may submit a request within five days of the IFSP meeting to have another IFSP meeting if the teacher disagrees with any portion of the IFSP.

(i) The certified teacher required in subsection (d) of this section is not required to attend an IFSP review when changes do not affect the child's auditory or vision services, but the contractor must obtain the teacher's input.

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## SUBCHAPTER K. SERVICE DELIVERY

### 26 TAC §350.1104, §350.1105

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code Chapter 73.

#### *§350.1104. Early Childhood Intervention Services Delivery.*

(a) Early childhood intervention services needed by the child must be initiated in a timely manner and delivered as planned in the Individualized Family Service Plan (IFSP) [IFSP]. Only qualified staff members, as described in Subchapter C of this chapter (relating to Staff Qualifications), are authorized to provide early childhood intervention services.

(b) The contractor must ensure that early childhood intervention services are appropriate, as determined by the IFSP team, and based on scientifically based research, to the extent practicable. In addition to the requirements in 34 CFR §303.13, early childhood intervention services, with the exception cited in subsection (c) of this section, must be provided:

(1) according to a plan and with a frequency that is individualized to the parent and child to effectively address the goals established in the IFSP;

(2) only to children who are located in the state of Texas at the time of service delivery;

(3) [(2)] in the presence of the parent or other routine caregiver, with an emphasis on enhancing the family's capacity to meet the developmental needs of the child; and



(4) ~~[(3)]~~ in the child's natural environment, as defined in 34 CFR §303.26 ~~[Part 303.26]~~, unless the criteria listed in 34 CFR §303.126 are met and documented in the case record, and may be provided via telehealth with the written consent of the parent. If the parent declines to consent to telehealth for some or all services, those services must be provided in person.

(c) Family education and training, as defined in §350.1105(5) of this subchapter (relating to Capacity to Provide Early Childhood Intervention Services):

(1) must be provided:

(A) according to a plan and with a frequency that is individualized to the parent and child to effectively address the goals established in the IFSP; and

(B) with a parent or other routine caregiver, with an emphasis on enhancing the family's capacity to meet the developmental needs of the child; and

(2) may be provided:

(A) when a child who resides in Texas is not located in the state at the time of service; and

(B) in a setting other than a child's natural environment.

(d) ~~[(e)]~~ Early Intervention services must:

(1) address the development of the whole child within the framework of the family;

(2) enhance the parent's competence to maximize the child's participation and functional abilities within daily routines and activities; and

(3) be provided in the context of natural learning activities in order to assist caregivers to implement strategies that will increase child learning opportunities and participation in daily life.

(e) ~~[(d)]~~ The contractor must provide a service coordinator and an interdisciplinary team for the child and family throughout the child's enrollment.

(f) ~~[(e)]~~ The contractor must make reasonable efforts to provide flexible hours in programming in order to allow the parent or routine caregiver to participate.

(g) ~~[(f)]~~ The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures) when planning and delivering early childhood intervention services.

(h) ~~[(g)]~~ Services must be monitored by the interdisciplinary team at least once every six months to determine:

(1) what progress is being made toward achieving goals;

(2) if services are reducing the child's functional limitations, promoting age appropriate growth and development, and are responsive to the family's identified goals for the child; and

(3) whether modifications to the plan are needed.

(i) ~~[(h)]~~ Monitoring occurs as part of the IFSP review process and must be documented in the case record.

*§350.1105. Capacity to Provide Early Childhood Intervention Services.*

The contractor must have the capacity to provide all early childhood intervention services in 34 CFR §303.13 ~~[(relating to Early intervention services-)]~~ and additional early childhood intervention services described in this chapter. These services are the following:

(1) Assistive Technology Device and Service--As defined in 34 CFR §303.13(b)(1).

(2) Audiology Services--As defined in 34 CFR §303.13(b)(2), plus services provided by local educational agency personnel, including sign language and cued language services as defined in 34 CFR §303.13(b)(12).

(3) Behavioral Intervention--Services delivered through a structured plan to strengthen developmental skills while specifically addressing severely challenging behaviors as determined by the Individualized Family Service Plan (IFSP) ~~[(IFSP)]~~ team. The behavior plan is developed by the IFSP team (that includes the plan supervisor) to:

(A) identify goals;

(B) conduct a functional assessment to determine the motivation for the behavior;

(C) develop a hypothesis;

(D) design support plans; and

(E) implement, monitor, and evaluate outcomes.

(4) Counseling--As family training, counseling, and home visits are defined in 34 CFR §303.13(b)(3). Counseling is provided when the nature and quality of the parent-child relationship interferes significantly with the Early Childhood Intervention ~~[(ECI)]~~ child's development. Counseling focuses on the parent-child relationship or other critical care-giving relationships and helps the child meet developmental outcomes.

(5) Family Education and Training--As family training, counseling, and home visits are defined in 34 CFR §303.13(b)(3). Family education and training is provided when the family needs information about general parenting techniques or ~~[and/or]~~ environmental concerns. Information provided follows a specific scope and sequence. Information may be based on general child care, developmental education, or other specific curriculum. Family Education and Training can be provided to parents in group settings without the children present.

(6) Health Services--As defined in 34 CFR §303.16.

(7) Medical Services--As defined in 34 CFR §303.13(b)(5).

(8) Nursing Services--As defined in 34 CFR §303.13(b)(6).

(9) Nutrition Services--As defined in 34 CFR §303.13(b)(7).

(10) Occupational Therapy--As defined in 34 CFR §303.13(b)(8).

(11) Physical Therapy--As defined in 34 CFR §303.13(b)(9).

(12) Psychological Services--As defined in 34 CFR §303.13(b)(10).

(13) Service Coordination--As defined in 34 CFR §303.13(b)(11) and includes all requirements in 34 CFR §303.34 ~~[(relating to service coordination services (case management))].~~

(14) Social Work Services--As defined in 34 CFR §303.13(b)(13).

(15) Sign Language and Cued Language--As defined in 34 CFR §303.13(b)(12).

(16) Specialized Skills Training--As defined in Subchapter E of this chapter (relating to Specialized Rehabilitative Services) plus the provision of special instruction as defined in 34 CFR §303.13(b)(14).

(17) Speech-Language Pathology Services--As defined in 34 CFR §303.13(b)(15) and can include sign language and cued language services as defined in 34 CFR §303.13(b)(12).

(18) Targeted Case Management--As defined in Subchapter D of this chapter (relating to Case Management for Infants and Toddlers with Developmental Disabilities).

(19) Transportation and Related Costs--As defined in 34 CFR §303.13(b)(16).

(20) Vision Services--As defined in 34 CFR §303.13(b)(17) plus services provided by local educational agency personnel.

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## SUBCHAPTER L. TRANSITION

### 26 TAC §§350.1205, 350.1207, 350.1211

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code Chapter 73.

#### §350.1205. *Transition Education and Information for the Family.*

(a) At the first meeting with the family after the referral, the contractor must explain:

(1) circumstances that would cause the child to no longer [tø] meet the eligibility requirements for early intervention services; and

(2) the Early Childhood Intervention [ECH] transition process.

(b) The contractor must provide the enrolled family an overview of transition concepts and activities, including:

(1) ways to plan ahead and help the child adjust to and function in new settings;

(2) future placement options for the child such as Local Education Agency (LEA) [LEA] special education services, community childcare settings, and home care;

(3) referral and contact information for relevant advocacy groups, local resources, parent support organizations, Medicaid programs, including waiver programs offering long-term services and supports if the child has a condition that would make them eligible for waiver programs, and other governmental agencies; and

(4) LEA Notification requirements and the LEA Notification Opt Out option.

(c) The contractor must document the transition conversation with the family in a progress note.

#### §350.1207. *Transition Planning.*

(a) Transition planning is a process that involves developing and updating appropriate steps and transition services:

(1) jointly with families; and

(2) based on recommendations from the Individualized Family Service Plan (IFSP) [IFSP] team.

(b) All transition activities must be documented in the child's record.

(c) The IFSP must contain an appropriate general transition statement.

(d) The contractor must conduct a meeting, which includes the parent, in accordance with 34 CFR §303.342(d) and (e) and §303.343(a), to plan appropriate steps and transition services in the IFSP.

(1) Except as provided in subsections (f) - (g) of this section, the meeting to plan and document appropriate steps and transition services in the IFSP must be conducted not fewer than 90 days, and at the discretion of all parties, not more than nine months before the child's third birthday. If the child is referred and determined to be eligible more than 45 but less than 90 days before the child's third birthday, appropriate steps and transitions services must be included in the child's initial IFSP.

(2) If transition planning occurs at a periodic review instead of an initial or annual IFSP meeting [meetings], the meeting must meet the requirements in 34 CFR §303.342(d) and (e) and §303.343(a).

(3) The appropriate steps and transition services that the IFSP team plans at the meeting must be documented in the IFSP and must include:

(A) timelines and responsible party for each transition activity;

(B) discussions with and training of parents, as appropriate, regarding future placements and other matters related to the child's transition;

(C) procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting;

(D) the family's choice for the child to transition into a community or educational program or for the child to remain in the home;

(E) identification of appropriate steps and transition services, deemed necessary by the IFSP team, to support the family's exit from early childhood intervention services to Local Education Agency (LEA) [LEA] special education services or other appropriate activities,

places, or programs the family would like the child to participate in after exiting early childhood intervention services;

(F) confirmation that the transition notification, which requires child find information to be transmitted to the LEA or other relevant agency, has occurred; and

(G) program options, if the child is potentially eligible for special education services, for the period from the child's third birthday through the remainder of the school year; and[-.]

(H) for children who are likely to be eligible for long-term specialized services and supports, information on Texas Medicaid waiver programs for people with disabilities or special health care needs, including information on how to add children to the waiver interest lists.

(e) The child's planned steps and transition services must be updated and documented in the IFSP anytime the:

- (1) IFSP team identifies new appropriate steps and transitional services; and
- (2) parent's goals for the child evolve and change.

(f) At any time during the child's enrollment in early childhood intervention services, the IFSP team must, upon parental request, meet to plan steps to support the child and family to transition:

- (1) from one contractor to another contractor;
- (2) from one family setting to another family setting; or
- (3) when the family is moving out of state.

(g) If the child is referred fewer than 45 days before the child's third birthday, the IFSP team is not required to plan steps and transition services. If the child is potentially eligible for preschool special education services, the contractor must, with written parental consent, refer the child directly to the LEA as soon as possible.

(h) The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures).

*§350.1211. Local Education Agency (LEA) [LEA] Notification of Potential Eligibility [Potentially Eligible] for Special Education Services.*

(a) The contractor's Individualized Family Service Plan (IFSP) [IFSP] team determines if a two year old receiving early childhood intervention services is potentially eligible for preschool special education services.

(b) Written parental consent is not required for the contractor to send LEA Notification of Potentially Eligible for Special Education Services, but the parent may opt out of LEA Notification as described in §350.1213 [§108.1213] of this subchapter [title] (relating to LEA Notification Opt Out). Written parental consent is required before sending information other than the child's limited personally identifiable information to the LEA.

(c) For a child whose parent has not opted out of the disclosure as described in §350.1213 [§108.1213] of this subchapter [title], the contractor must notify the LEA at least 90 days before the child's third birthday that the child is potentially eligible for preschool special education services. The contractor must send the LEA for the area in which the child resides the LEA Notification of Potentially Eligible for Special Education Services, which contains the child's limited personally identifiable information as defined in §350.1203(5) [§108.1203(5)] of this subchapter [title] (relating to Definitions).

(d) If the contractor determines a child is eligible for early childhood intervention services fewer than 90 days and more than 45 days before the child's third birthday, the contractor must determine as soon as possible whether the child is potentially eligible for preschool special education services. If the contractor determines the child is potentially eligible for preschool special education services, the contractor must provide notification to the LEA as soon as possible, unless the parent opts out of the disclosure as described in §350.1213 [§108.1213] of this subchapter [title].

(e) If the contractor receives a referral for a child fewer than 45 days before the child's third birthday and the child may be potentially eligible for preschool special education services, the contractor must, with written parental consent, refer the child directly to the LEA. The contractor is not required to conduct pre-enrollment procedures, an evaluation, an assessment, or an initial IFSP meeting.

(f) To assist the LEA in determining eligibility, the contractor, with written parental consent, must send the LEA the most recent:

- (1) evaluations;
- (2) assessments; and
- (3) IFSPs.

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 19, 2021.

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Karen Ray  
Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 438-5031



## SUBCHAPTER N. FAMILY COST SHARE SYSTEM

**26 TAC §§350.1413, 350.1419, 350.1425, 350.1431, 350.1435**  
STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code Chapter 73.

*§350.1413. Individualized Family Service Plan (IFSP) [IFSP] Services Subject to Out-of-Pocket Payment from the Family.*

(a) IFSP services subject to out-of-pocket payment from the family are:

- (1) assistive technology;
- (2) behavioral intervention;
- (3) occupational therapy services;

- (4) physical therapy services;
- (5) speech-language pathology services;
- (6) nutrition services;
- (7) counseling services;
- (8) nursing services;
- (9) psychological services;
- (10) health services;
- (11) social work services;
- (12) transportation;
- (13) specialized skills training;
- (14) family education and training; and
- (15) any IFSP services to children with auditory or visual impairments that are not required by an individualized education program (IEP) pursuant to Texas Education Code[;] §29.003(b)(1).

(b) The family pays out-of-pocket up to their maximum charge. The family's maximum charge is determined based on their placement on the Texas Health and Human Services Commission (HHSC) Early Childhood Intervention (ECI) [~~HHSC ECI~~] Sliding Fee Scale, as described in §350.1431 [~~§108.1431~~] of this subchapter [~~title~~] (relating to HHSC ECI Sliding Fee Scale).

§350.1419. *Private Insurance*

(a) The contractor must obtain written parental consent to bill and to release personally identifiable information to private insurance.

(b) The contractor must obtain written parental consent when initially seeking to use their private insurance and subsequently each time the contractor obtains written parental consent due to an increase (in frequency, length, duration, or intensity) in the provision of services in the Individualized Family Service Plan [~~IFSP~~].

(c) If private insurance denies payment of the claim, the contractor must bill the family up to their maximum charge, based on their placement on the sliding fee scale.

(d) The contractor must adjust the amount billed to the family if the contractor or parent successfully disputes a denied claim.

(e) The contractor must not deny or delay a child's services if:

(1) the family does not have private insurance; or

(2) the parent does not give consent to bill or to release personally identifiable information to their private insurance. If the parent does not give consent, the contractor bills the family up to their maximum charge, based on their placement on the sliding fee scale.

(f) A family with private insurance will not be charged disproportionately more than a family without private insurance.

(g) If a child is covered by private insurance only, once the contractor has verified that the private insurance plan will not pay for certain Early Childhood Intervention (ECI) services for a child, the contractor is not required to continue to bill the private insurance plan for those services for that child. The contractor must continue to bill for any services that the private insurance company does cover. The contractor must verify coverage for ECI services with the private insurance plan at least annually.

§350.1425. *Public Benefits and Insurance.*

(a) Medicaid, Children's Health Insurance Program (CHIP) [~~CHIP~~], and TRICARE are public insurance programs.

(b) The contractor must assist the parent to:

(1) identify and access other available funding sources to pay for a child's early childhood intervention services; and

(2) enroll a potentially eligible child in Medicaid or CHIP.

(c) The contractor must not require a parent to enroll in public benefits or insurance programs as a condition of receiving early childhood intervention services.

(d) If the child is not already receiving public insurance, the contractor must obtain written parental consent before billing. The contractor must waive the maximum charge while eligibility is being determined, not to exceed 90 days.

(e) The contractor must obtain written parental consent to release personally identifiable information to Medicaid, CHIP, and TRICARE. If the parent does not give consent to release personally identifiable information, the contractor bills the parent up to their maximum charge, based on their placement on the sliding fee scale.

(f) The contractor must not bill the parent if the child is enrolled in Medicaid and the parent gives consent to release personally identifiable information to Medicaid.

(g) If the child is in foster care or kinship care, the contractor must obtain consent to release personally identifiable information to bill Medicaid.

(h) If the child has private insurance in addition to Medicaid, the private insurance is the primary payor. The contractor must bill the private insurance every time before filing a claim with Medicaid for all services other than targeted case management or specialized skills training.

(i) If the child has CHIP or TRICARE and the parent gives consent to release personally identifiable information, the contractor must bill the family for services not paid for by CHIP or TRICARE and for any co-pays, up to the family's maximum charge, based on their placement on the sliding fee scale.

(j) If the child becomes ineligible for Medicaid, CHIP, or TRICARE, the contractor bills the parent up to their maximum charge, based on their placement on the sliding fee scale.

(k) The contractor must not deny or delay a child's services if:

(1) the family does not have public insurance; or

(2) the parent does not give consent to release personally identifiable information to their public insurance. If the parent does not give consent, the contractor bills the family up to their maximum charge, based on their placement on the sliding fee scale.

(l) A family with public insurance will not be charged disproportionately more than a family without public or private insurance.

~~[(m) If a child is covered by private insurance only, once the contractor has verified that the private insurance plan will not pay for certain ECI services for a child, the contractor is not required to continue to bill the private insurance plan for those services for that child. The contractor must verify coverage for ECI services with the private insurance plan at least annually.]~~

§350.1431. *Texas Health and Human Services Commission (HHSC) Early Childhood Intervention (ECI) [~~HHSC ECI~~] Sliding Fee Scale.*

(a) The contractor must provide the family with a copy of the HHSC ECI sliding fee scale. Based on family size and income, placement on the HHSC ECI sliding fee scale determines the family's maximum charge for services received in one calendar month.

(b) The HHSC ECI sliding fee scale assigns a set dollar amount as the maximum charge for adjusted income ranges less than

or equal to 1000 percent of the federal poverty level. HHSC calculates the maximum charge for each income range by applying a fixed percentage (ranging from 0.25 to 5 percent) to the mid-point income within each range based on the U.S. Department of Health and Human Services most recently published Federal Poverty Levels.

(c) For children and families who enroll in ECI services on or after September 1, 2015, the family's maximum charge shall be pursuant to Figure: 26 TAC §350.1431(c) [40 TAC §108.1431(e)] identified in this subsection. If the parent refuses to attest in writing that information about their third-party coverage, family size, and gross income is true and accurate, then the family monthly maximum payment equals the full cost of services.

Figure: 26 TAC §350.1431(c)

[Figure: 40 TAC §108.1431(e)]

§350.1435. *Suspension of Services for Nonpayment.*

(a) The contractor must suspend Individualized Family Service Plan (IFSP) [IFSP] services subject to an out-of-pocket payment as identified in §350.1413 [§108.1413] of this subchapter [title] (relating to IFSP Services Subject to Out-of-Pocket Payment from the Family) when the balance remains delinquent for 90 days. If the parent uses their public or private insurance, the 90-day time period begins the date the contractor receives notice that the claims are denied for reimbursement and all appeals are exhausted.

(b) Before suspending IFSP services, the contractor must inform the parent that:

(1) he or she has the option to request a:

(A) review of the family cost share agreement, as described in §350.1417 [§108.1417] of this subchapter [title] (relating to Family Cost Share Agreement); or

(B) [a] reconsideration and adjustment of the family cost share obligation, as described in §350.1437 [§108.1437] of this subchapter [title] (relating to Extraordinary Circumstances);

(2) IFSP services subject to an out-of-pocket payment will be suspended when a balance is delinquent for 90 days; and

(3) the contractor cannot guarantee the same schedule or the same individual service provider if IFSP services are later reinstated.

(c) Respite vouchers will be denied during a suspension period.

(d) A notation must be made on the family cost share agreement that IFSP services subject to an out-of-pocket payment have been suspended due to non-payment.

(e) The contractor must reinstate suspended IFSP services when the family's account is paid in full or the family negotiates an acceptable payment plan with the contractor. The IFSP team must reassess the appropriateness of the IFSP before reinstating IFSP services if IFSP services are suspended for more than six months. The contractor must document the reinstatement of IFSP services date on the IFSP and the family cost share agreement.

(f) The contractor must maintain written local policy for collecting delinquent family cost share accounts. Documentation must reflect all reasonable attempts to collect unpaid balances. Reasonable attempts include multiple attempts at written notification, phone notification, and e-mail.

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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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-5031

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**TITLE 30. ENVIRONMENTAL QUALITY**

**PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

**CHAPTER 7. MEMORANDA OF UNDERSTANDING**

**30 TAC §7.103**

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §7.103.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking would implement portions of Senate Bill (SB) 703, 87th Regular Legislature, which removed the Texas Department of Agriculture's (TDA) roles and responsibilities related to regulation of the aquaculture industry. Previously, the TCEQ, the TDA, and the Texas Parks and Wildlife Department (TPWD) coordinated on regulating the aquaculture industry. This multi-agency coordination is codified in a Memorandum of Understanding (MOU) in 30 Texas Administrative Code (TAC) §7.103. This rulemaking would revise the MOU to remove TDA from this multi-agency coordination.

Additionally, this rulemaking would make additional updates to the MOU, based on TCEQ rule changes related to the aquaculture industry since the MOU was last adopted. These include repeal of the permit-by-rule and exemptions in Chapter 321, Subchapter O, and the issuance of the Aquaculture General Permit Number TXG130000.

Section Discussion

The commission proposes revisions throughout the rule to remove all references to the TDA, in accordance with SB 703, which removed the TDA's roles and responsibilities related to regulation of the aquaculture industry. Additionally, the commission proposes revisions throughout the rule to change the commission's name from the Texas Natural Resource Conservation Commission to the TCEQ. The commission also proposes revisions throughout the rule to improve readability and the overall structure of the rule.

Lastly, the commission proposes revisions throughout the rule to remove references to registrations and exemptions issued by the TCEQ to the aquaculture industry because the TCEQ repealed the regulations in Chapter 321, Subchapter O, that provided for these types of authorizations. These authorization types have been replaced by the Aquaculture General Permit Number TXG130000.

The commission proposes minor clarifications and revisions to subsection (a) as noted above regarding revisions proposed throughout the rule.

The commission proposes revisions to subsection (b) to update the definition of "Aquaculture" consistent with the definition in the Aquaculture General Permit Number TXG130000 and to remove the definition of "Memorandum of Understanding" because this definition is not included in other MOUs.

The commission proposes revisions to subsection (c) to add references to additional applicable state statutes that establish TCEQ and TPWD authorities.

The commission proposes revisions to subsection (d) to establish coordination activities regarding renewal and amendment of the Aquaculture General Permit Number TXG130000. The proposed revisions would also revise procedures related to TPWD requesting additional information from applicants rather than from the TCEQ during their review of Notices of Intent (NOI) and individual permit applications. Additional proposed revisions to this subsection would revise the timing of when, in the permitting process, the TCEQ must send applications to the TPWD, and remove the TCEQ's requirement to develop guidelines for a site assessment environmental report for new commercial shrimp facilities located within the coastal zone. The report guidelines have been developed and the TCEQ's individual permit application form requires new commercial shrimp facilities located within the coastal zone to develop and submit a site assessment report.

The commission proposes removal of subsection (e) relating to the executive review committee and proposes new subsection (e) relating to other coordination activities that were previously included as part of subsection (d). The executive review committee is proposed for removal because SB 703 removed the requirement for an executive review committee. The TCEQ and TPWD would continue coordination effort via the interagency workgroup as described in proposed new subsection (e)(3).

The commission proposes amendments to subsection (f) to revise the effective date of the MOU to coordinate with the effective date of the rule and to remove the requirement for the agency governing bodies to sign the MOU. The governing bodies will each adopt the rule to signify their agreement to the MOU requirements.

#### Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

#### Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated would be coordination of regulatory oversight activities between the TCEQ and TPWD regarding aquaculture facilities. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a

local economy in a material way for the first five years that the proposed rule is in effect.

#### Rural Community Impact Statement

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

#### Small Business and Micro-Business Assessment

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

#### Small Business Regulatory Flexibility Analysis

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

#### Government Growth Impact Statement

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

#### Draft Regulatory Impact Analysis Determination

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

The proposed rulemaking does not meet the definition of "Major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, this proposed rulemaking is intended to implement an interagency review procedure for applications requesting authorization to discharge wastewater from aquaculture facilities and coordinate enforcement actions in response to discharges from aquaculture facilities. The proposed rulemaking would also implement portions of SB 703, which removed the TDA's roles and responsibilities related to regulation of the aquaculture industry. This proposed rulemaking should not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment,

or the public health and safety of the state or a sector of the state. Therefore, the commission finds that this proposed rulemaking is not a "Major environmental rule."

Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in TGC, §2001.0225(a). TGC, §2001.0225 only applies to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the proposed rulemaking does not exceed a standard set by federal law, rather it addresses the process for the TCEQ and TPWD to coordinate the regulation of aquaculture facilities within the federal law and authority delegated to the state. Likewise, the proposed rulemaking does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement because state law expressly authorizes it. Finally, the proposed rulemaking was not developed solely under the general powers of the agency because it is also authorized under TWC, §5.104, which authorizes TCEQ to enter into an MOU with any other state agency, and Texas Agriculture Code, §134.031, which directs the TCEQ and TPWD to enter into an MOU.

Under TGC, §2001.0225, only a "Major environmental rule" requires a regulatory impact analysis. Because the proposed rulemaking does not constitute a "Major environmental rule," a regulatory impact analysis is not required.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated the proposed rule and performed analysis of whether the proposed rule constitutes a taking under TGC, §2007.043. The specific purpose of the proposed rule is to improve coordination between the TCEQ and TPWD and facilitate an exchange of information to assist the TCEQ in making environmentally sound decisions. The proposed rule would substantially advance this stated purpose by updating the current MOU between the TCEQ and TPWD. The proposed rule provides a formal mechanism by which the TPWD may review and provide feedback on aquaculture issues that are subject to regulation by the TCEQ and have the potential to affect natural resources and the regulation of aquaculture within the jurisdiction of the TPWD.

Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations would not affect a landowner's rights in private real property because this rulemaking would not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Thus, this rule would not impose burdens on private real property because the proposed rule neither relates to, nor has any impact on the use or enjoyment of private real

property, and there would be no reduction in value of the property as a result of this rulemaking.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

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

#### Announcement of Hearing

The commission will hold a virtual public hearing on this proposal on January 4, 2022, at 2:00 p.m. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

#### Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by January 3, 2022. To register for the hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on January 3, 2022, to those who register for the hearing.

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

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_ZjQ-1MjYxMGUtMzFjMi00NTBkLTIYzQtNWQ5ZDRiYjY0Yjc2%40t-hread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec-010b-f0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcastMeeting%22%3a%22true%7d&type=a&role=a](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZjQ-1MjYxMGUtMzFjMi00NTBkLTIYzQtNWQ5ZDRiYjY0Yjc2%40t-hread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec-010b-f0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcastMeeting%22%3a%22true%7d&type=a&role=a).

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2021-021-007-OW. The comment period closes on January 5, 2022. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For

further information, please contact Ms. Laurie Fleet, Water Quality Division, (512) 239-5445.

#### Statutory Authority

The rule is proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.104, which authorizes the Texas Commission on Environmental Quality (TCEQ) to enter into a Memorandum of Understanding (MOU) with any other state agency; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; TWC, §26.011, which establishes the commission's jurisdiction over all aspects of establishing and controlling the quality of waters of the state with all power necessary or convenient to carry out the responsibilities of that jurisdiction; and Texas Agriculture Code, §134.031, which requires the TCEQ and the Texas Parks and Wildlife Department to enter into an MOU for the regulation of matters relating to aquaculture.

The proposed rule implements portions of Senate Bill 703, 87th Regular Legislature.

*§7.103. Memorandum of Understanding (MOU) between the Texas Commission on Environmental Quality (TCEQ) and [Texas Natural Resource Conservation Commission (ecommission);] the Texas Parks and Wildlife Department (TPWD) Regarding the Regulation of Aquaculture [; and the Texas Department of Agriculture (TDA)].*

#### (a) Need for agreement.

(1) The Texas Commission on Environmental Quality (TCEQ) and Texas Parks and Wildlife Department (TPWD) [ecommission, TPWD, and TDA] seek to ensure that regulation of aquaculture is conducted in a manner that is both collaborative and responsible.

(2) The TCEQ and TPWD [ecommission, TPWD, and TDA] are concerned about issues relating to the raising of non-native aquatic species and their potential for [the attendant concern about] escape into natural ecosystems, including the introduction of disease into natural ecosystems.

(3) The TCEQ and TPWD [ecommission, TPWD, and TDA] are concerned about the quality of wastewater discharges from aquaculture facilities and their effects on receiving waters in reservoirs, streams, bays, and estuaries.

(4) The TCEQ and TPWD [ecommission, TPWD, and TDA] seek to implement [establish] an interagency review procedure for applications requesting authorization to discharge wastewater from aquaculture facilities.

(5) The TCEQ and TPWD [ecommission, TPWD, and TDA] seek to implement [institute] an effective system by which coordination and collaboration can be achieved to expedite enforcement actions in response to discharges from aquaculture facilities that are found to contain contagious disease that may impact state waters.

(6) Texas Water Code, §5.104, authorizes the TCEQ [ecommission] to enter into an MOU with any other state agency.

(7) Texas Agriculture Code, §134.031, directs the TCEQ and TPWD [ecommission, TPWD, and TDA] to enter into an MOU for the regulation of matters relating to aquaculture.

(8) It is the intention of this MOU to provide a formal mechanism by which the TPWD [and TDA] may review and provide feedback on aquaculture issues that are subject to regulation by the TCEQ [ecommission] and that have the potential to affect natural

resources and the regulation of aquaculture within the jurisdiction of the TPWD [or TDA]. This exchange of information would assist the TCEQ [ecommission] in making environmentally sound decisions and would improve coordination between the TCEQ and TPWD [ecommission, TPWD, and TDA].

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings.

(1) Aquaculture--The business of producing or rearing aquatic species (fish, crustaceans, mollusks, or any [and] other organisms, excluding aquatic plants and algae, living in either fresh or marine waters) utilizing ponds, lakes, cages, fabricated tanks and raceways, or other similar structures.

[(2) Memorandum of Understanding (MOU)--A formal document that clarifies and provides for the respective duties, responsibilities, or functions of the state agencies who are signatories on any matter or matters under their jurisdiction that are not expressly assigned to either one of them.]

(2) [(3)] Application--A request submitted by an aquaculture facility to the TCEQ [ecommission] for authorization to discharge under an individual permit or [registration;] a Notice of Intent (NOI) to seek authorization under a general permit [; or a request for an exemption].

#### (c) Responsibilities.

(1) [The ecommission.] The responsibilities of the TCEQ [ecommission] relate primarily to its role as the natural resource agency with primary responsibility over conservation of natural resources and the protection of the environment, under Texas Water Code, §5.012.

(A) The TCEQ [ecommission] has general jurisdiction over the state's water quality program including issuance of wastewater [waste] discharge permits, water quality planning, and enforcement of water quality rules, standards, orders, and permits, under Texas Water Code, §5.013.

(B) The TCEQ [ecommission] seeks to maintain the quality of water in the state consistent with public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state, and to require the use of all reasonable methods to implement this policy.

(C) The TCEQ [ecommission] is responsible for review of wastewater [NOIs and requests for exemption, and review of] applications and [subsequent] issuance of wastewater [waste] discharge permits [; temporary orders, emergency orders, and registrations].

(2) [TPWD.] The responsibilities of the TPWD relate primarily to its functions as a natural resource agency, including its resource protection functions, as designated by the Texas Parks and Wildlife Code, §12.001 and §12.0011.

(A) The TPWD is the state agency with primary responsibility for protecting the state's fish and wildlife resources.

(B) The TPWD provides recommendations that will protect fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct developmental projects.

(C) The TPWD provides information on fish and wildlife resources to any local, state, and federal agencies or private organizations that make decisions affecting those resources.

(D) The TPWD regulates the taking, possession, and conservation of all kinds of marine life and other aquatic life.



(E) The TPWD regulates the introduction of fish, shellfish, and aquatic plants into public water, under Texas Parks and Wildlife Code, §66.015(b).

(F) The TPWD regulates the importation, possession, and placing into state water of harmful or potentially harmful exotic species of fish, shellfish, or aquatic plants, under Texas Parks and Wildlife Code, §66.007(a), and is responsible for review of applications and subsequent issuance of permits relating to these activities.

~~{(G) TPWD is responsible for review of applications and subsequent issuance of permits relating to the importation, possession, and placing into state water of harmful or potentially harmful exotic species of fish, shellfish, or aquatic plants, under Texas Parks and Wildlife Code, §66.007(a).}~~

~~{(3) TDA. The responsibilities of TDA relate primarily to its functions as a regulatory agency that oversees the licensing and regulation of aquaculture operations under Texas Agriculture Code, Chapter 134.}~~

~~{(A) TDA is responsible for establishing recordkeeping requirements for commercial aquaculture facilities.}~~

~~{(B) TDA is responsible for the review of applications and subsequent issuance of aquaculture licenses under Texas Agriculture Code, Chapter 134, to aquaculture facilities that produce and sell cultured species.}~~

~~{(C) TDA is responsible for the review of applications and subsequent issuance of aquaculture licenses under Texas Agriculture Code, Chapter 134, for fish farm vehicles selling cultured species from the vehicle.}~~

~~(d) Coordination procedures for wastewater discharge applications and permits. [Provisions. This MOU is to facilitate the coordination and collaboration between the commission, TPWD, and TDA with regard to aquaculture facilities.}~~

~~(1) Coordination procedures for the Aquaculture General Permit Number TXG130000 and associated NOIs [ applications for registrations, and requests for exemptions].~~

~~(A) During renewal or amendment of the Aquaculture General Permit, the TCEQ will provide the initial draft permit to the TPWD for review and comment prior to submitting the draft to EPA for review and approval. [The executive director will provide copies of all NOIs, registration applications, and requests for exemption to TPWD and TDA within 14 days of the stamped date of receipt.}~~

~~(i) Within 45 days of the date of receipt of the initial draft permit, the TPWD will complete its initial assessment, and by letter shall provide the TCEQ with formal written recommendations designed to protect fish and wildlife resources or indicate that it has no comments. [Within 45 days of the date of receipt of the NOI, registration application, or request for exemption, by TPWD and TDA, each will complete its initial assessment, and by letter shall:}~~

~~~~{(I) provide the executive director with formal written recommendations designed to protect fish and wildlife resources; or}~~~~

~~~~{(II) indicate that it has no comments; or}~~~~

~~~~{(III) request additional information from the commission.}~~~~

~~(ii) If the TCEQ does not receive formal written comments from the TPWD within 45 days of the date of receipt of the initial draft permit, the TCEQ will conclude that there are no comments and continue processing of the general permit renewal~~

or amendment. [If the commission does not receive formal written comments from TPWD or TDA within 45 days of the date of receipt of the NOI, registration application, or request for exemption, by TPWD and TDA, the executive director will conclude that there are no comments and continue normal processing of the application.}

~~(iii) Formal written comments received from the TPWD will be considered by the TCEQ in developing the final draft permit. The TPWD's comments will be evaluated in conjunction with all other applicable factors and will be incorporated by the TCEQ whenever it is consistent with the TCEQ's responsibilities. In accordance with the responsibilities of the TCEQ as described in subsection (c)(1) of this section, the TCEQ reserves the right to determine the requirements of the final draft permit. Concurrent with submission of the final draft permit to EPA, the TCEQ will provide a copy of the final draft permit to the TPWD.~~

~~(B) The TCEQ will provide copies of all NOIs to the TPWD within 14 days of the date of receipt. [Upon receipt of a request from TPWD or TDA for additional information, the executive director will immediately provide such information if it is contained in the application materials. If the additional information is not included in the application materials, and if the information is necessary for TPWD or TDA to make its evaluation, the TPWD or TDA will request such additional information from the applicant, notify the executive director of this request, and ask the applicant to send a copy of its reply to the commission. If the applicant does not provide the additional information to the TPWD or TDA within 30 days of a request, the TPWD or TDA may request that the executive director suspend processing of the application. If the executive director determines that this additional information is essential to complete the technical review, the executive director will determine whether it is appropriate to either suspend processing or deem the application incomplete and return it to the applicant.}~~

~~(i) Within 45 days of the date of receipt of the NOI by the TPWD, the TPWD will complete its initial assessment, and by letter shall provide the TCEQ with formal written recommendations designed to protect fish and wildlife resources; indicate that it has no comments; or notify the TCEQ that it has requested additional information from the applicant. If TPWD requires additional information to make its evaluation, then the TPWD may request such additional information from the applicant within 45 days of the date of receipt of the NOI.~~

~~(ii) Except as provided by paragraph (3)(B) of this subsection, if the TCEQ does not receive a response from the TPWD within 45 days of TPWD receipt of the NOI, the TCEQ will conclude that there are no comments and continue processing of the application.~~

~~(iii) Formal written comments received from the TPWD will be considered by the TCEQ in determining whether to grant authorization under the general permit or require the applicant to seek authorization under an individual permit. The TPWD's comments will be evaluated in conjunction with all other applicable factors consistent with the TCEQ's responsibilities. In accordance with the responsibilities of the TCEQ as described in paragraph (c)(1) of this section, the TCEQ reserves the right to determine the final disposition of the NOI.~~

~~{(C) Upon receipt of additional information from the executive director or the applicant, the TPWD and TDA will each have 30 days to complete its review and either make final recommendations or indicate by letter that it has no comments. If formal written comments or additional information is not received from the TPWD or TDA within 30 days, the executive director will conclude that there are no comments and will continue normal processing of the application.}~~

(2) Coordination procedures for individual permit applications.

(A) The TCEQ [executive director] will provide [notification] to the TPWD a copy [and TDA] of each individual permit application file received which requests [individual permit] authorization to [for the] discharge [or disposal of] wastewater from aquaculture facilities within 14 days of the TCEQ administrative review completion. The application file [Notification shall be transmitted within 14 days of a request received from either TPWD or TDA, or after the permit application has been assigned to a permit writer. Notification] shall include a copy of the application and any comments, memoranda, letters, or other information incorporated in the application file following date of application receipt so that the TPWD [and TDA] may complete an initial assessment of the proposed operation.

~~[(i) Within 45 days of the date of receipt of notification by TPWD and TDA, each will complete its initial assessment, and by letter shall:]~~

~~[(ii) provide the executive director with formal written recommendations designed to protect fish and wildlife resources; or]~~

~~[(iii) indicate that it has no comments; or]~~

~~[(iii) request additional information from the commission.]~~

~~[(ii) If the commission does not receive formal written comments from TPWD or TDA within 45 days of the date of receipt of the notification by TPWD and TDA, the executive director will conclude that there are no comments and continue normal processing of the application.]~~

(B) Within 45 days of the date of receipt of the permit application file, the TPWD will complete its initial assessment, and by letter shall provide the TCEQ with formal written recommendations designed to protect fish and wildlife resources; indicate that it has no comments; or notify the TCEQ that it has requested additional information from the applicant. If TPWD requires additional information to make its evaluation, then the TPWD may request such additional information from the applicant within 45 days of the date of receipt of the permit application file. [Upon receipt of a request from TPWD or TDA for additional information, the executive director will immediately provide such information if it is contained in the application materials. If additional information is not included in the application materials, and if the information is necessary for TPWD or TDA to make its evaluation, the TPWD or TDA will request such additional information from the applicant, notify the executive director of this request, and ask the applicant to send a copy of its reply to commission. If the applicant does not provide the additional information to the TPWD or TDA within 30 days of a request, the TPWD or TDA may request that the executive director suspend processing of the application. If the executive director determines that this additional information is essential to complete the technical review, the executive director will determine whether it is appropriate to either suspend processing or deem the application incomplete and return it to the applicant.]

(C) Except as provided by paragraph (3)(B) of this subsection of this section, if the TCEQ does not receive a response from the TPWD within 45 days of the TPWD receipt of the permit application file, the TCEQ will conclude that there are no comments and continue processing of the application. [Upon receipt of additional information from the executive director or applicant, the TPWD and TDA will each have 30 days to complete its review and either make final recommendations or indicate that it has no comments. If formal written comments

are not received from the TPWD or TDA within 30 days, the executive director will conclude that there are no comments and continue normal processing of the application.]

(D) Formal written comments received from the TPWD will be considered by the TCEQ in developing the final draft permit. The TPWD's comments will be evaluated in conjunction with all other applicable factors and will be incorporated by the TCEQ whenever it is consistent with the TCEQ's responsibilities. In accordance with the responsibilities of the TCEQ as described in paragraph (c)(1) of this section, the TCEQ reserves the right to determine the requirements of the final draft permit. Upon making a preliminary recommendation regarding an application, the TCEQ will provide a response to the TPWD that contains a copy of the final draft permit and documentation providing an explanation on why any of the TPWD's comments were not incorporated. [In coordination with the TPWD and TDA, the commission shall, within 120 days of the date of adoption of this MOU, establish guidelines for a site assessment environmental report for new commercial shrimp facilities located within the coastal zone. This report shall describe the existing environmental conditions at the proposed site including aquatic habitat and the conditions of water in the state into which a discharge is proposed. The report must provide an assessment of any potential impacts of wastewater discharges on sensitive aquatic habitats in the area of the proposed site, and significant impacts related to the construction or operation of the facility, and any mitigation actions proposed by the applicant.]

(3) Coordination procedures applicable to all applications.

(A) The scope of review by the TPWD may include, but is not limited to: consideration of especially sensitive receiving water conditions (aquatic habitat); impacts of the discharge on substrate (scouring, sedimentation) and water transparency; alteration of receiving water flow characteristics; existing or attainable biological and recreational uses; discharge rate and volume; and the likelihood of disease transmission. Comments may be addressed directly to the applicant by the TPWD.

(B) If the TPWD requests additional information from the applicant, the TPWD will request that the applicant provide a copy of the information to the TCEQ. If the applicant does not provide the additional information to the TPWD within 30 days of a request, the TCEQ will determine whether it is appropriate to either suspend processing the application or return it to the applicant. Upon receipt of additional information from the applicant, the TPWD will have 30 days to complete its review and either make final recommendations to the TCEQ or indicate that it has no comments. If formal written comments are not received from the TPWD within 30 days of receipt of the additional information, the TCEQ will conclude that there are no comments and continue processing of the application. [The scope of review by TDA may include, but is not limited to, whether or not an application for the discharge or disposal of wastewater from aquaculture facilities should be approved.]

[(C) Formal written comments received from TPWD and TDA will be considered by the executive director in making decisions on applications requesting authorization for the discharge or disposal of wastewater from aquaculture facilities. TPWD's and TDA's comments will be evaluated in conjunction with all other applicable factors and will be incorporated by the executive director whenever it is consistent with the commission's responsibilities. In accordance with the responsibilities of the commission as described in this document, the executive director reserves the right to determine the final disposition of applications. Upon making a preliminary recommendation regarding an application, the executive director will provide a response to TPWD and TDA that contains a copy of the initial draft permit, draft order, or final decision on an exemption or registration,

and documentation providing an explanation on why any of TPWD's and TDA's comments were not incorporated. A final draft permit will be transmitted to the TPWD and the TDA.}]

(C) [(D)] [TPWD shall, within 120 days of the date of adoption of this MOU, develop guidelines identifying sensitive aquatic habitat within the coastal zone. TPWD will provide the guidelines it develops to the executive director and TDA.]} The TCEQ [executive director] will consider guidelines developed by the TPWD with input from the TCEQ and stakeholders identifying [the] sensitive aquatic habitat within the coastal zone [guidelines] when reviewing wastewater discharge applications for new aquaculture facilities or expansion of existing facilities in the coastal zone.

(D) [(E)] The TCEQ and TPWD will strive to provide each other notification of public meetings and contested case hearings that relate to aquaculture applications. [TPWD shall, within 120 days of the date of adoption of this MOU, develop guidelines which list the type of information it needs from permit applicants, in addition to the commission wastewater permit application, in order to make a determination as to whether the proposed discharges will not adversely affect a bay, an estuary, or other water in the state. This additional information will be used during the review of the permit application. The TPWD will develop these guidelines with input from the stakeholders, the commission, and TDA. When the guidelines are finalized by TPWD, the agencies will make them available to stakeholders and applicants, and it is expected that the requested information will routinely be required as part of any wastewater discharge application. It is understood that occasions may arise when information beyond that which is listed in the guidelines may be required by TPWD.]}

[(F)] A new exotic species permit will not be issued by TPWD to any aquaculture facility that proposes to discharge wastewater until a commission waste discharge permit or other authorization has been issued or it is determined that the facility is exempted from such requirements.]}

[(G)] TDA will provide a copy of each aquaculture license application received to the commission and TPWD. An aquaculture license will not be issued by TDA to any aquaculture facility until a commission waste discharge permit or other authorization has been issued, or it is determined that the facility is exempted from such requirements.]}

[(H)] An interagency work group will be formed whose function will be to meet at least annually to address aquaculture issues relating to water quality, fish and wildlife resources, and receiving stream habitat and uses. This work group will serve to strengthen coordination of the commission, TPWD, and TDA activities related to the aquaculture industry and provide a conduit for shared information. The work group shall be composed of members of each agency and staffed at levels which are mutually agreeable as adequate to accomplish the stated goals. Each agency shall designate a primary contact person for this group and notify the other agencies of any changes to the primary contact person.]}

[(I)] The executive director and TPWD will coordinate studies related to applications that request authorizations for the discharge and disposal of wastewater. This may include on-site visits, receiving water assessments, sample collection, data analysis and related activities. Notification of these activities will be provided at least five days prior to the activity or as soon as is practicable. TPWD will notify the appropriate commission regional office and the Wastewater Permitting Section. The executive director will notify TPWD Resource Protection Regional Office and headquarters.]}

[(J)] The executive director and TPWD will strive to coordinate responses to emergency conditions, investigation of unauthorized waste discharges, and compliance inspections of aquaculture facilities. The executive director and TPWD will provide notice to each other regarding site inspections, so as to allow the other agency to participate if desired. Notifications of scheduled compliance inspections will be provided at least five days before the inspection. Notification of other activities will be provided as soon as practicable. TPWD will notify the commission regional office and the executive director will notify TPWD Resource Protection Regional Office.]}

[(K)] The executive director, TPWD, and TDA will strive to provide to each agency notification of public meetings, public hearings, and contested case hearings that relate to aquaculture applications.]}

[(L)] The executive director and TPWD will continue to develop and provide to applicants, permit conditions and, as appropriate, guidance related to disease, quarantine conditions, and emergency plans.]}

(c) Other coordination activities.

(1) The TPWD shall, within 120 days of the date of adoption of this MOU, review the wastewater discharge application forms and provide proposed changes that are necessary to obtain relevant information for the TPWD's review. The TCEQ will solicit feedback from the TPWD each time the TCEQ revises the forms related to aquaculture facilities.

(2) A new exotic species permit will not be issued by the TPWD to any aquaculture facility that proposes to discharge wastewater until a TCEQ wastewater discharge permit or other authorization has been issued or it is determined that the facility is exempted from such requirements.

(3) An interagency work group will be formed, whose function will be to coordinate on matters related to aquaculture to aid in ensuring that proposed wastewater discharges will not adversely affect bays, estuaries, or other water in the state. This work group will meet at least annually to address aquaculture issues relating to water quality, fish and wildlife resources, and receiving stream habitat and uses. This work group will serve to strengthen coordination between the TCEQ and TPWD related to the aquaculture industry and provide a conduit for shared information. The work group shall be composed of members of each agency and staffed at levels which are mutually agreeable as adequate to accomplish the stated goals. Each agency shall designate a primary contact person for this group and notify the other agency of any changes to the primary contact person.

(4) The TCEQ and TPWD will coordinate studies related to applications that request authorizations for the discharge wastewater. This may include on-site visits, receiving water assessments, sample collection, data analysis and related activities. Notification of these activities will be provided at least five days prior to the activity or as soon as is practicable. The TPWD will notify the appropriate TCEQ regional office and the Wastewater Permitting Section Manager. The TCEQ will notify the TPWD Water Quality Program.

(5) The TCEQ and TPWD will strive to coordinate responses to emergency conditions, investigation of unauthorized wastewater discharges, and compliance inspections of aquaculture facilities for wastewater discharges. The TCEQ and TPWD will provide notice to each other at least five days prior to conducting a site inspection related to wastewater discharges, so as to allow the other agency to participate if desired. The TPWD will notify the appropriate TCEQ regional office and the TCEQ will notify the TPWD Water Quality Program.

(6) The TCEQ and TPWD will continue to develop and provide to applicants, permit conditions and, as appropriate, guidance related to disease, quarantine conditions, and emergency plans.

[(e) Application Review Committee.]

[(1) Purpose.]

[(A) The application review committee (ARC) will review wastewater discharge authorization applications to ensure that the proposed discharges will not adversely affect a bay, an estuary, or other water in the state.]

[(B) The commission, TPWD, and TDA recognize the importance of integrating and coordinating among themselves to ensure that this ultimate goal, stated in subparagraph (A) of this paragraph, is achieved.]

[(C) In order to accomplish this, the ARC will function as a forum for discussion, answering questions and resolving differences; in an attempt to come to consensus regarding the controls needed to meet the ultimate goal.]

[(D) The ARC shall primarily be used as a means for settling unresolved disputes concerning aquaculture between the agencies.]

[(2) Membership.]

[(A) Each agency, the commission, TPWD, and TDA, will appoint one member to the ARC.]

[(B) Each agency shall appoint an alternate member of the committee.]

[(C) If a member or alternate is unable to attend a meeting, then that member or alternate will temporarily delegate his or her decision-making authority to other staff of that agency for that meeting only.]

[(D) At meetings of the ARC, technical specialists representing the agencies may participate in or contribute to the committee's discussions and other activities.]

[(E) Within two weeks of the adoption of this MOU, each agency will inform the other two agencies of the member and alternates.]

[(F) An agency may change its member or alternate by providing notice to each of the other members and alternates.]

[(3) Applicability. The ARC may consider any wastewater discharge application when disputes can not be resolved at the staff level.]

[(4) Functioning of the ARC.]

[(A) Meetings.]

[(i) Meetings will be on an as needed basis.]

[(ii) Any member of the ARC may request a meeting of the committee to consider one or more discharge applications.]

[(iii) Any meeting of the ARC to consider a specific discharge permit application should, whenever possible, be requested prior to the public notice of the application and preliminary decision.]

[(iv) It is the responsibility of the member requesting the meeting to notify all the members and alternates, and to establish a mutually agreeable meeting time and location.]

[(v) The meeting shall take place within seven calendar days of the request.]

[(vi) It is the responsibility of the agency requesting the meeting to take minutes of the meeting, to provide the minutes for review and comment by the other parties, and to provide a final version of the minutes which reflects any comments received.]

[(B) Decision making. The ARC will strive for unanimous consent on all decisions. In the event that unanimous agreement cannot be reached among members of the committee, the matter under consideration may be referred to officials of the agencies for resolution in an expeditious manner. The agencies agree that, while recognizing the areas of expertise and authority of the members, decision-making deliberations will focus on the agencies' mutual purpose of ensuring that the proposed discharge will not adversely affect a bay, an estuary, or other water in the state.]

[(C) Confidentiality. The ARC supports an open government policy and it is understood and agreed that information subject to public disclosure under the Texas Public Information Act shall be released upon written request.]

(f) General conditions.

(1) The term of this MOU shall be from the effective date until amendment or termination of this agreement. Any amendment to the MOU shall be made by mutual agreement of the parties [and shall be adopted by rule by all parties].

(2) Each party shall adopt the MOU by rule, including subsequent amendments. [All amendments shall also be adopted by rule.] This MOU, and any subsequent amendment, shall become effective on the effective date of the rule [20 days after the date on which the rule is filed in the Office of the Secretary of State].

[(3) By signing this MOU, the signatories acknowledge that they are acting upon proper authority from their governing bodies.]

(3) [(4)] Reservation of rights. Each agency has and reserves the right to take whatever actions necessary to pursue or preserve any legal remedies available to that agency, and nothing in this MOU is intended to waive or foreclose any such right.

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 19, 2021.

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2809



## CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§114.1, 114.50, and 114.82.

If adopted, amended §§114.1, 114.50, and 114.82 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP) in a future SIP revision.

## Background and Summary of the Factual Basis for the Proposed Rules

Senate Bill (SB) 604, 86th Texas Legislature, 2019, added digital license plates to Chapter 504 of the Texas Transportation Code (TTC). This proposed rulemaking would update TCEQ rules to be consistent with the TTC, relating to the display of a vehicle's registration insignia for certain commercial fleet or governmental entity vehicles on a digital license plate in lieu of attaching the registration insignia to the vehicle's windshield.

The inspection and maintenance (I/M) rules require the TCEQ to implement the I/M program in conjunction with the Texas Department of Public Safety (DPS). Currently, motorists are required to demonstrate compliance with the I/M program by displaying a current valid vehicle registration insignia sticker affixed to the vehicle's windshield, a current valid vehicle inspection report (VIR), or other form of proof authorized by the DPS. The I/M rules also require denying renewal of registration until a vehicle complies with I/M program requirements.

### Demonstrating Noninterference under Federal Clean Air Act, §110(l)

The proposed amendments to Chapter 114 would allow a digital license plate in lieu of attaching the registration insignia to the vehicle's windshield. Because the emissions inspection is still required within 90 days of the registration expiration, these amendments are not intended or expected to impact the compliance rate and the effectiveness of the I/M program. The proposed rulemaking would not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone National Ambient Air Quality Standards.

### Section by Section Discussion

The following proposed amendments would ensure compliance with Chapter 504 of the TTC and that proof of compliance with I/M requirements are consistent between the TCEQ, the Texas Department of Motor Vehicles (DMV), and the DPS.

The commission proposes non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble.

#### §114.1, Definitions

The current definition for vehicle registration insignia sticker includes language that it be affixed on the windshield of a vehicle. The proposed revisions remove the restrictive language and add language to allow for alternative forms of proof of compliance with I/M requirements provided for by the DPS or the DMV.

#### §114.50, Vehicle Emissions Inspection Requirements

The proposed revisions to §114.50(b)(1)(B) remove language for affixing the vehicle registration insignia sticker to the vehicle windshield. In addition, the proposed revisions add language to allow for different forms of proof of compliance with I/M requirements provided by the DPS and the DMV.

#### §114.82, Control Requirements

The proposed revisions to §114.82(a)(2) remove language for affixing the vehicle registration insignia sticker to the vehicle windshield. In addition, the proposed revisions add language to allow

for different forms of proof of compliance with I/M requirements provided by the DPS and the DMV.

### Fiscal Note: Costs to State and Local Government

Jené Bearse, Acting Deputy Director of the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

### Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated would be continued compliance with the Texas Transportation Code. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

### Local Employment Impact Statement

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

### Rural Communities Impact Assessment

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

### Small Business and Micro-Business Assessment

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

### Small Business Regulatory Flexibility Analysis

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

### Government Growth Impact Statement

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

### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225, and determined that the proposed rules do

not meet the definition of a "Major environmental rule." TGC, §2001.0225(g)(3), states that a "Major environmental rule" is "a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." The proposed rulemaking does not constitute a major environmental rule under TGC, §2001.0225(g)(3), because: (1) the specific intent of the proposed rulemaking is not to protect the environment or reduce risks to human health from environmental exposure, but rather to modify administrative aspects of an existing program by implementing SB 604, which allows the display of a vehicle's registration insignia for certain commercial fleet or governmental entity vehicles on a digital license plate in lieu of attaching the registration insignia to the vehicle's windshield; and (2) as discussed in the Fiscal Note, Public Benefits And Costs, Small Business Regulatory Flexibility Analysis, and the Local Employment Impact Statement sections of this preamble, the proposed rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor would the proposed rules adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state because the amendments are merely administrative changes to the existing program.

Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule.

TGC, §2001.0225, applies only to a major environmental rule which: (1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

The specific intent of the proposed rulemaking is to implement applicable sections of SB 604, relating to the display of a vehicle's registration insignia. SB 604 allows the display of a vehicle's registration insignia for certain commercial fleet or governmental entity vehicles on a digital license plate in lieu of attaching the registration insignia to the vehicle's windshield. The proposed rulemaking: (1) does not exceed a standard set by federal law; (2) does not exceed an express requirement of state law; (3) is not proposed solely under the general powers of the agency; and (4) does not exceed a requirement of a delegation agreement or contract to implement a state and federal program. Because the proposed rulemaking is not a major environmental rule, it is not subject to a regulatory impact analysis under TGC, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated the proposed rules and performed an analysis of whether the proposed rules constitute a taking under TGC, Chapter 2007. The commission's preliminary assessment indicates TGC, Chapter 2007, does not apply.

Under TGC, §2007.002(5), taking means: (A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The specific purpose of the proposed rulemaking is to implement applicable sections of SB 604, relating to the display of a vehicle's registration insignia sticker. SB 604 allows the display of a vehicle's registration insignia for certain commercial fleet or governmental entity vehicles on a digital license plate in lieu of attaching the registration insignia to the vehicle's windshield. Therefore, the proposed rulemaking does not have any impact on private real property.

Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of private real property. These rules would not be burdensome, restrictive, or limiting of rights to private real property because the proposed rules do not affect a landowner's rights in private real property. This rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these rules would not constitute a taking under TGC, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor would they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

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

#### Announcement of Virtual Hearing

The commission will hold a virtual public hearing on this proposal on *January 4, 2022, at 10:00 a.m.* The virtual hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, staff will be available to discuss the proposal 30 minutes prior to the hearing and after the virtual hearing via the Teams Live Event Question & Answer chat function.

#### Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by Monday, *January 3, 2022.* To register for the

hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on *January 3, 2022*, to those who register for the hearing.

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

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_MmM0MTczNDAtY2MyNS00NDM2LWJiMjMtNGJlZWJMTi0MDc0%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcastMeeting%22%3a%22true%7d&btype=a&role=a](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MmM0MTczNDAtY2MyNS00NDM2LWJiMjMtNGJlZWJMTi0MDc0%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcastMeeting%22%3a%22true%7d&btype=a&role=a)

Persons who have special communication or other accommodation needs who are planning to register to provide formal oral comments and/or attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RE-LAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/> File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2021-029-114-AI. The comment period closes on January 5, 2022. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Nicholas Landuyt, Air Quality Planning Section, (512) 239-4905.

## SUBCHAPTER A. DEFINITIONS

### 30 TAC §114.1

#### Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, General Powers; TWC, §5.103, Rules; and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to propose rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also proposed under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to propose rules consistent with the policy and purposes of THSC, Chapter 382 (Texas Clean Air Act), and to propose rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also proposed under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions

From Land Vehicles, which provides the commission the authority to propose rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 et seq.; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to propose an inspection and maintenance program for participating early action compact counties.

The rule revisions implement amendments to Texas Transportation Code, §§504.151 - 504.157, which were amended by Senate Bill 604, 86th Texas Legislature, 2019.

#### §114.1. Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Dual-fuel vehicle--Any motor vehicle or motor vehicle engine engineered and designed to be operated on two different fuels, but not a mixture of the two.

(2) Emergency vehicle--A vehicle defined as an authorized emergency vehicle according to Texas Transportation Code, §541.201(1).

(3) Emissions--The emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, particulate, or any combination of these substances.

(4) First safety inspection certificate--Initial Texas Department of Public Safety (DPS) certificates issued through DPS-certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. Beginning on the single sticker transition date as defined in this section, the safety inspection certificates will no longer be used.

(5) First vehicle registration--Initial vehicle registration insignia sticker issued through the Texas Department of Motor Vehicles for every new vehicle found to be in compliance with the rules and regulations governing vehicle registration prior to the single sticker transition date as defined in this section and vehicle registration and safety inspections beginning on the single sticker transition date.

(6) Gross vehicle weight rating--The value specified by the manufacturer as the maximum design loaded weight of a vehicle. This is the weight as expressed on the vehicle's registration, and includes the weight the vehicle can carry or draw.

(7) Heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a gross vehicle weight rating (GVWR) greater than 8,500 pounds, and is required to be registered under Texas Transportation Code, §502.002. For purposes of the mobile emission reduction credit trading program the heavy-duty class is divided into the following subclasses:

(A) Light heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 8,500 pounds, but less than or equal to 10,000 pounds.

(B) Medium heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 10,000 pounds, but less than or equal to 19,500 pounds.

(C) Heavy heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 19,500 pounds.

(8) Inherently low emission vehicle--A vehicle as defined by 40 Code of Federal Regulations Part 88.

(9) Law enforcement vehicle--Any vehicle controlled by a local government and primarily operated by a civilian or military police officer or sheriff, or by state highway patrols, or other similar law enforcement agencies, and used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities.

(10) Light-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a gross vehicle weight rating (GVWR) less than or equal to 8,500 pounds and registered or required to be registered under Texas Transportation Code, §502.002. For purposes of the mobile emission reduction credit trading program the light-duty class is divided into the following subclasses:

(A) Light-duty vehicle--Any passenger vehicle capable of seating 12 or fewer passengers that has a GVWR less than or equal to 6,000 pounds.

(B) Light-duty truck 1--Any passenger truck capable of transporting people, equipment, or cargo that has a GVWR less than or equal to 6,000 pounds.

(C) Light-duty truck 2--Any passenger truck capable of transporting people, equipment, or cargo that has a GVWR greater than 6,000 pounds but less than or equal to 8,500 pounds.

(11) Loaded mode inspection and maintenance test--A measurement of the tailpipe exhaust emissions of a vehicle while the drive wheel rotates on a dynamometer, which simulates the full weight of the vehicle driving down a level roadway. Loaded test equipment specifications must meet United States Environmental Protection Agency requirements for acceleration simulation mode equipment.

(12) Low emission vehicle (LEV)--A vehicle in a class or category of vehicles that has been certified by the United States Environmental Protection Agency for any model year to meet:

(A) the LEV standards applicable under 42 United States Code, Part C, Subchapter II, §§7581 *et seq.*; [*et seq.*] or

(B) emission limits at least as stringent as the applicable LEV standards for the Federal Clean Fuel Fleet program under 40 Code of Federal Regulations §§88.104-94, 88.105-94, and 88.311-93, as published in the *Federal Register* on September 30, 1994 (59 FR 50042).

(13) Mass transit authority--A transportation or transit authority or department established under Chapter 141, 63rd Legislature (1973), as defined in Texas Transportation Code, Chapters 451 - 453 (relating to Metropolitan Rapid Transit Authorities, Regional Transportation Authorities, and Municipal Transit Departments) that operates a mass transit system under any of those laws.

(14) Reformulated gasoline--Gasoline that has been certified as a reformulated gasoline under the federal certification regulations adopted in accordance with 42 United States Code, §7545(k).

(15) Single sticker transition date--The transition date of the single sticker system is the later of March 1, 2015, or the date that the Texas Department of Motor Vehicles and the Texas Department of Public Safety concurrently implement the single sticker system required by Texas Transportation Code, §502.047.

(16) Texas Inspection and Maintenance State Implementation Plan--The portion of the Texas state implementation plan that includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission May 29, 1996, in accordance with 40 Code of Federal Regulations Part 51, Subpart S, issued November 5, 1992; the United States Environmental Protection Agency flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995. A copy of the Texas Inspection and Maintenance State Implementation Plan is available at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166, Austin, Texas 78711-3087.

(17) Tier I federal emission standards--The standards are defined in 42 United States Code, §7521, and in 40 Code of Federal Regulations Part 86. The phase-in of these standards began in model year 1994.

(18) Ultra low emission vehicle--A vehicle as defined by 40 Code of Federal Regulations Part 88.

(19) Vehicle registration--Vehicle characteristics, corresponding owner information, and registration expiration date contained in the Texas Department of Motor Vehicles registration system.

(20) Vehicle registration insignia sticker--The sticker issued through the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector for ~~to be affixed on the windshield of~~ a vehicle compliant with the DMV regulations. Beginning on the single sticker transition date as defined in this section, the vehicle registration insignia sticker, a current valid VIR, or other form of proof authorized by the DPS or the DMV will be used as proof of compliance with inspection and maintenance program requirements, the DMV's rules and regulations governing vehicle registration, and the Texas Department of Public Safety's rules and regulations governing safety inspections.

(21) Zero emission vehicle--A vehicle as defined by 40 Code of Federal Regulations Part 88.

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 19, 2021.

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Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 239-2809



SUBCHAPTER C. VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT



PROGRAM; AND EARLY ACTION COMPACT  
COUNTIES  
DIVISION 1. VEHICLE INSPECTION AND  
MAINTENANCE

**30 TAC §114.50**

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, General Powers; TWC, §5.103, Rules; and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to propose rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also proposed under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to propose rules consistent with the policy and purposes of THSC, Chapter 382 (Texas Clean Air Act), and to propose rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also proposed under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to propose rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 et seq.; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to propose an inspection and maintenance program for participating early action compact counties.

The rule revisions implement amendments to Texas Transportation Code, §§504.151 - 504.157, which were amended by Senate Bill 604, 86th Texas Legislature, 2019.

*§114.50. Vehicle Emissions Inspection Requirements.*

(a) Applicability. The requirements of this section and those contained in the Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) must be applied to all gasoline-powered motor vehicles 2 - 24 years old and subject to an annual emissions inspection beginning with the first safety inspection. Military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles that cannot operate using gasoline, and antique vehicles registered with the Texas Department of Motor Vehicles are excluded from the program. Safety inspection facilities and inspectors certified by the Texas Department of Public Safety (DPS) must inspect all subject vehicles in the following program areas as defined in §114.2 of this title (relating to Inspection and Maintenance Definitions), in accordance with the following schedule.

(1) This paragraph applies to all vehicles registered and primarily operated in the Dallas-Fort Worth (DFW) program area.

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties equipped with on-board diagnostic (OBD) systems must be tested using United States Environmental Protection Agency (EPA)-approved OBD test procedures.

(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties must be tested using an acceleration simulation mode (ASM-2) test or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas must offer both the ASM-2 test and the OBD test except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator shall petition the DPS in accordance with the rules and procedures established by the DPS.

(2) This paragraph applies to all vehicles registered and primarily operated in the extended DFW (EDFW) program area.

(A) Beginning May 1, 2003, all 1996 and newer model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties equipped with OBD systems must be tested using EPA-approved OBD test procedures.

(B) Beginning May 1, 2003, all pre-1996 model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties must be tested using an ASM-2 test or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas must offer both the ASM-2 test and the OBD test except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator shall petition the DPS in accordance with the rules and procedures established by the DPS.

(3) This paragraph applies to all vehicles registered and primarily operated in the Houston-Galveston-Brazoria (HGB) program area.

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Harris County equipped with OBD systems must be tested using EPA-approved OBD test procedures.

(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Harris County must be tested using an ASM-2 test or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas must offer both the ASM-2 test and the OBD test except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator shall petition the DPS in accordance with the rules and procedures established by the DPS.

(D) Beginning May 1, 2003, all 1996 and newer model year vehicles equipped with OBD systems and registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties must be tested using EPA-approved OBD test procedures.

(E) Beginning May 1, 2003, all pre-1996 model year vehicles registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties must be tested using the ASM-2 test procedures or a vehicle emissions test approved by the EPA.

(4) This paragraph applies to all vehicles registered and primarily operated in the El Paso program area.

(A) All vehicles must be tested using a two-speed idle (TSI) test through December 31, 2006.

(B) Beginning January 1, 2007, all 1996 and newer model year vehicles equipped with OBD systems must be tested using EPA-approved OBD test procedures.

(C) Beginning January 1, 2007, all pre-1996 model year vehicles must be tested using a TSI test.

(D) Beginning January 1, 2007, all vehicle emissions inspection stations in the El Paso program area must offer both the TSI test and OBD test.

(b) Control requirements.

(1) No person or entity may operate, or allow the operation of, a motor vehicle registered in the DFW, EDFW, HGB, and El Paso program areas that does not comply with:

(A) all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS as evidenced prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions) by a current valid inspection certificate affixed to the vehicle windshield, a current valid vehicle inspection report (VIR), or other form of proof authorized by the DPS;

(B) beginning on the single sticker transition date, all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS, as evidenced by a current valid vehicle registration insignia sticker [~~affixed to the vehicle windshield~~], a current valid VIR, or other form of proof authorized by the DPS or the DMV; and

(C) the vehicle emissions I/M requirements contained in this subchapter.

(2) All federal government agencies must require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the federal government agency and located in a program area to comply with all vehicle emissions I/M requirements specified in Texas Health and Safety Code, Subchapter G, §§382.201 - 382.216 (concerning Vehicle Emissions), and this chapter. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, §§7401 et seq.) [~~et seq.~~]. This requirement will not apply to visiting federal government agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

(3) Any motorist in the DFW, EDFW, HGB, or El Paso program areas who has received a notice from an emissions inspection station that there are recall items unresolved on his or her motor vehicle should furnish proof of compliance with the recall notice prior to the next vehicle emissions inspection, such as a written statement from the dealership or leasing agency indicating that emissions repairs have been completed.

(4) A motorist whose vehicle has failed an emissions test may request a challenge retest through the DPS. If the retest is conducted within 15 days of the initial inspection, the retest is free.

(5) A motorist whose vehicle has failed an emissions test and has not requested a challenge retest or whose vehicle has failed a challenge retest shall have emissions-related repairs performed and submit a properly completed vehicle repair form (VRF) in order to receive a retest. In order to receive a waiver or time extension, the mo-

torist shall submit a VRF or applicable documentation as deemed necessary by the DPS.

(6) A motorist whose vehicle is registered in the DFW, EDFW, HGB, or El Paso program areas or in any county adjacent to a program area and whose vehicle has failed an on-road test administered by the DPS shall:

(A) submit the vehicle for an out-of-cycle vehicle emissions inspection within 30 days of written notice by the DPS; and

(B) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program specified in 37 TAC Chapter 23, Subchapter E (relating to Vehicle Emissions Inspection and [And] Maintenance Program).

(7) A subject vehicle registered in a county without an I/M program that meets the applicability criteria of subsection (a) of this section and the ownership of which has changed through a retail sale as defined by Texas Occupations Code, §2301.002, is not eligible for title receipt or registration in a county with an I/M program unless proof is presented that the vehicle has passed an approved vehicle emissions inspection within 90 days before the title transfer. The evidence of proof required may be in the form of the vehicle inspection report (VIR) or another proof of the program compliance as authorized by the DPS. All 1996 and newer model year vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this paragraph.

(8) State, governmental, and quasi-governmental agencies that fall outside the normal registration or inspection process must comply with all vehicle emissions I/M requirements for vehicles primarily operated in I/M program areas.

(c) Waivers and extensions. A motorist may apply to the DPS for a waiver or an extension as specified in 37 TAC Chapter 23, Subchapter E, which defers the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

(d) Prohibitions.

(1) No person may issue or allow the issuance of a VIR, as authorized by the DPS unless all applicable air pollution emissions control-related requirements of the annual vehicle safety inspection and the vehicle emissions I/M requirements are completely and properly performed in accordance with the rules and regulations adopted by the DPS and the commission. Prior to taking any enforcement action regarding this provision, the commission must consult with the DPS.

(2) Before the single sticker transition date as defined in §114.1 of this title, no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603 (concerning Fictitious or Counterfeit Inspection Certificate or Insurance Document). Beginning on the single sticker transition date, no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, VIRs, VRFs, vehicle emissions repair documentation, or other documents that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603.

(3) No organization, business, person, or other entity may represent itself as an emissions inspector certified by the DPS unless such certification has been issued under the certification requirements

and procedures contained in Texas Transportation Code, §§548.401 - 548.404.

(4) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas, as designated by the DPS, without first obtaining and maintaining DPS recognition.

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 19, 2021.

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Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 239-2809



### DIVISION 3. EARLY ACTION COMPACT COUNTIES

#### 30 TAC §114.82

##### Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, General Powers; TWC, §5.103, Rules; and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to propose rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also proposed under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to propose rules consistent with the policy and purposes of THSC, Chapter 382 (Texas Clean Air Act), and to propose rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also proposed under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to propose rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 et seq.; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to propose an inspection and maintenance program for participating early action compact counties.

The rule revisions implement amendments to Texas Transportation Code, §§504.151 - 504.157, which were amended by Senate Bill 604, 86th Texas Legislature, 2019.

#### §114.82. Control Requirements.

(a) No person or entity may operate, or allow the operation of, a motor vehicle registered in the affected early action compact (EAC) counties that does not comply with:

(1) all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the Texas Department of Public Safety (DPS) as evidenced prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions) by a current valid inspection certificate affixed to the vehicle windshield, a current valid vehicle inspection report (VIR), or other form of proof authorized by the DPS;

(2) beginning on the single sticker transition date, all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS as evidenced by a current valid vehicle registration insignia sticker [~~affixed to the vehicle windshield~~] or a current valid VIR, or other form of proof authorized by the DPS or the DMV; and

(3) the vehicle emissions inspection and maintenance (I/M) requirements contained in this subchapter.

(b) All federal government agencies must require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the agency and located in an affected EAC county to comply with all vehicle emissions I/M requirements contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, §§7401 et seq.). This requirement does not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

(c) A motorist in an affected EAC county who has received a notice from an emissions inspection station that there are unresolved recall items on the motor vehicle shall furnish proof of compliance with the recall notice prior to the next vehicle emissions inspection, such as a written statement from the dealership or leasing agency indicating that emissions repairs have been completed.

(d) A motorist whose vehicle has failed an emissions test may request a challenge retest through DPS. If the retest is conducted within 15 days of the initial inspection, the cost of the retest is free.

(e) A motorist whose vehicle has failed an emissions test and has not requested a challenge retest or has failed a challenge retest shall have emissions-related repairs performed and submit a properly completed vehicle repair form in order to receive a retest. In order to receive a waiver or time extension, the motorist shall submit a vehicle repair form or applicable documentation as considered necessary by the DPS.

(f) A motorist whose vehicle is registered in an affected EAC county, or in any county adjacent to an affected EAC county, and has failed an on-road test administered by the DPS shall:

(1) submit the vehicle for an out-of-cycle vehicle emissions inspection within 30 days of written notice by the DPS; and

(2) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision.

(g) A vehicle registered in a county without an I/M program that meets the applicability criteria of §114.80(c) of this title (relating to Applicability), and the ownership of which has changed through a retail sale as defined by Texas Motor Vehicle Commission Code, Article 4413(36), §1.03 (moved to Texas Occupations Code, §2301.002, effective June 1, 2003), is not eligible for title receipt or registration in an affected EAC program county with an I/M program unless proof is presented that the vehicle has passed an approved vehicle emissions inspection within 90 days before the title transfer. The evidence of proof required may be in the form of the vehicle inspection report or another proof of the program compliance as authorized by the DPS. All 1996 and newer model year vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this subsection.

(h) State, governmental, and quasi-governmental agencies that fall outside the normal registration or inspection process must comply with all vehicle emissions I/M requirements contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision for vehicles primarily operated in I/M program areas.

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 19, 2021.

TRD-202104691

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Texas Commission on Environmental Quality

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 239-2809



## CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

### SUBCHAPTER D. STANDARDS FOR PROTECTION AGAINST RADIATION

#### 30 TAC §336.357

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §336.357.

Background and Summary of the Factual Basis for the Proposed Rule

The commission proposes changes to Chapter 336, Subchapter D, that would revise the commission's rules concerning physical protection of category 1 and category 2 quantities of radioactive materials to ensure compatibility with federal regulations promulgated by the Nuclear Regulatory Commission (NRC), which is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations (CFR) Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended." Rules which are designated by NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules, in most cases.

Section Discussion

The commission proposes administrative changes throughout this rulemaking to be consistent with *Texas Register* requirements and agency rules and guidelines.

#### §336.357, *Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material*

The commission proposes to amend the requirements regarding physical protection of category 1 and category 2 quantities of radioactive materials in §336.357(j).

The commission proposes to amend §336.357(e)(3)(A) and §336.357(e)(3)(B) to update the contact information for the NRC to ensure compatibility with federal regulations promulgated by the NRC.

The commission proposes to amend §336.357(j)(4)(B), §336.357(j)(4)(C), §336.357(j)(4)(C)(i), §336.357(j)(4)(E), §336.357(j)(4)(F), §336.357(j)(4)(G), and §336.357(j)(4)(H)(ii) to add "list of individuals that have been approved for unescorted access" to the list of information for which access must be controlled. These rule amendments are proposed to ensure compatibility with federal regulations promulgated by the NRC.

The commission proposes to amend §336.357(u)(1)(A) to update the name for a specific NRC division to ensure compatibility with federal regulations promulgated by the NRC.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated would be compliance with federal regulations promulgated by the Nuclear Regulatory Commission. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Communities Impact Assessment

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

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is

not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

#### Government Growth Impact Statement

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

#### Draft Regulatory Impact Analysis Determination

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the statute. A "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposal to Chapter 336 is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because these revisions are required for the TCEQ to maintain compatibility with the NRC for these licensing programs. Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

Texas Health and Safety Code (THSC), Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, Texas is an "Agreement State" authorized by the NRC to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The proposed rule is compatible with federal law.

The proposed rule does not exceed an express requirement of state law. THSC, Chapter 401, establishes general requirements, including requirements for public notices, for the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The proposed rule is compatible with a requirement of a delegation agreement or contract between the state and an agency of the federal government. Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended by the Low Level Radioactive Waste Policy Act Amendments (LLRWPA), 42 USC 2021.

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

#### Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas

Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that the Private Real Property Rights Preservation Act does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law. The commission further evaluated this proposed rulemaking and performed a preliminary assessment of whether this proposed rule constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The proposed rule does not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

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

#### Announcement of Hearing

The commission will hold a virtual public hearing on this proposal on January 6, 2022, at 10:00 a.m. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order

of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by January 5, 2022. To register for the hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on January 5, 2022, to those who register for the hearing.

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

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_MzVINTgwOTeOWYxMi00ODc3LTliOGEtNmFiNDc1M2ZjN2Ux-%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcastMeeting%22%3a%7d&btype=a&role=a](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MzVINTgwOTeOWYxMi00ODc3LTliOGEtNmFiNDc1M2ZjN2Ux-%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcastMeeting%22%3a%7d&btype=a&role=a).

Persons who have special communication or other accommodation needs should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Cecilia Mena, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2021-026-336-WS. The comment period closes on January 10, 2022. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Hans Weger, Radioactive Materials Section, (512) 239-6465.

#### Statutory Authority

The rule is proposed under the Texas Radiation Control Act (TRCA), Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; and THSC, §401.106, which authorizes the commission to adopt rules to exempt a source of radiation from the licensing requirements provided by the TRCA. The rule is proposed as authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The proposed amendments implement THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

*§336.357. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.*

(a) Specific exemption. A licensee that possesses radioactive waste that contains category 1 or category 2 quantities of radioactive material is exempt from the requirements of subsections (b) - (w) of this section. However, any radioactive waste that contains discrete sources, ion-exchange resins, or activated material that weighs less than 2,000 kilograms (4,409 pounds) is not exempt from the requirements of subsections (b) - (w) of this section. The licensee shall implement the following requirements to secure the radioactive waste:

(1) use continuous physical barriers that allow access to the radioactive waste only through established access control points;

(2) use a locked door or gate with monitored alarm at the access control point;

(3) assess and respond to each actual or attempted unauthorized access to determine whether an actual or attempted theft, sabotage, or diversion occurred; and

(4) immediately notify the local law enforcement agency (LLEA) and request an armed response from the LLEA upon determination that there was an actual or attempted theft, sabotage, or diversion of the radioactive waste that contains category 1 or category 2 quantities of radioactive material.

(b) Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material.

(1) General.

(A) Each licensee that possesses an aggregated quantity of radioactive material at or above the category 2 threshold shall establish, implement, and maintain its access authorization program in accordance with the requirements of this subsection and subsections (c) - (h) of this section.

(B) An applicant for a new license and each licensee, upon application for modification of its license, that would become newly subject to the requirements of this subsection and subsections (c) - (h) of this section, shall implement the requirements of this subsection and subsections (c) - (h) of this section, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

(C) Any licensee that has not previously implemented the Security Orders or been subject to the provisions of this subsection and subsections (c) - (h) of this section shall implement the provisions of this subsection and subsections (c) - (h) of this section before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

(2) General performance objective. The licensee's access authorization program must ensure that the individuals specified in paragraph (3)(A) of this subsection are trustworthy and reliable.

(3) Applicability.

(A) Licensees shall subject the following individuals to an access authorization program:

(i) any individual whose assigned duties require unescorted access to category 1 or category 2 quantities of radioactive material or to any device that contains the radioactive material; and

(ii) reviewing officials.

(B) Licensees need not subject the categories of individuals listed in subsection (f)(1) of this section to the investigation elements of the access authorization program.

(C) Licensees shall approve for unescorted access to category 1 or category 2 quantities of radioactive material only those individuals with job duties that require unescorted access to category 1 or category 2 quantities of radioactive material.

(D) Licensees may include individuals needing access to safeguards information-modified handling under 10 Code of Federal Regulations (CFR) Part 73, in the access authorization program under this subsection and subsections (c) - (h) of this section.

(c) Access authorization program requirements.

(1) Granting unescorted access authorization.

(A) Licensees shall implement the requirements of subsection (b) of this section, this subsection, and subsections (d) - (h) of this section for granting initial or reinstated unescorted access authorization.

(B) Individuals determined to be trustworthy and reliable shall also complete the security training required by subsection (j)(3) of this section before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

(2) Reviewing officials.

(A) Reviewing officials are the only individuals who may make trustworthiness and reliability determinations that allow individuals to have unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.

(B) Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. The fingerprints of the named reviewing official must be taken by a law enforcement agency, Federal or State agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a State to take fingerprints. The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every 10 years in accordance with subsection (d)(3) of this section.

(C) Reviewing officials must be permitted to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information or safeguards information-modified handling, if the licensee possesses safeguards information or safeguards information-modified handling.

(D) Reviewing officials cannot approve other individuals to act as reviewing officials.

(E) A reviewing official does not need to undergo a new background investigation before being named by the licensee as the reviewing official if:

(i) the individual has undergone a background investigation that included fingerprinting and a Federal Bureau of Investigations (FBI) criminal history records check and has been determined to be trustworthy and reliable by the licensee; or

(ii) the individual is subject to a category listed in subsection (f)(1) of this section.

(3) Informed consent.

(A) Licensees may not initiate a background investigation without the informed and signed consent of the subject individual.

This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is found during the background investigation. Licensees do not need to obtain signed consent from those individuals that meet the requirements of subsection (d)(2) of this section. A signed consent must be obtained prior to any reinvestigation.

(B) The subject individual may withdraw his or her consent at any time. Licensees shall inform the individual that:

(i) if an individual withdraws his or her consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent; and

(ii) the withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

(4) Personal history disclosure. Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by subsection (b) of this section, this subsection, and subsections (d) - (h) of this section is sufficient cause for denial or termination of unescorted access.

(5) Determination basis.

(A) The reviewing official shall determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information collected to meet the requirements of subsection (b) of this section, this subsection, and subsections (d) - (h) of this section.

(B) The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information collected to meet the requirements of subsection (b) of this section, this subsection, and subsections (d) - (h) of this section and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on information obtained at any time during the background investigation.

(C) The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.

(D) The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual granted unescorted access authorization.

(E) Licensees shall maintain a list of persons currently approved for unescorted access authorization. When a licensee determines that a person no longer requires unescorted access or meets the access authorization requirements, the licensee shall remove the person from the approved list as soon as possible, but no later than ~~no later than~~ seven working days, and take prompt measures to ensure that the individual is unable to have unescorted access to the material.

(6) Procedures. Licensees shall develop, implement, and maintain written procedures for implementing the access authorization

program. The procedures must include provisions for the notification of individuals who are denied unescorted access. The procedures must include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization. The procedures must contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

(7) Right to correct and complete information.

(A) Prior to any final adverse determination, licensees shall provide each individual subject to subsection (b) of this section, this subsection, and subsections (d) - (h) of this section with the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of one year from the date of the notification.

(B) If, after reviewing his or her criminal history record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306, as set forth in 28 CFR §§16.30 - 16.34. In the latter case, the FBI will forward the challenge to the agency that submitted the data, and will request that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division will make any changes necessary in accordance with the information supplied by that agency. Licensees must provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record is made available for his or her review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

(8) Records.

(A) The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(B) The licensee shall retain a copy of the current access authorization program procedures as a record for three years after the procedure is no longer needed. If any portion of the procedure is superseded, the licensee shall retain the superseded material for three years after the record is superseded.

(C) The licensee shall retain the list of persons approved for unescorted access authorization for three years after the list is superseded or replaced.

(d) Background investigations.

(1) Initial investigation. Before allowing an individual unescorted access to category 1 or category 2 quantities of radioactive material or to the devices that contain the material, licensees shall complete a background investigation of the individual seeking unescorted access authorization. The scope of the investigation must encompass at least the seven years preceding the date of the background investigation or since the individual's eighteenth birthday, whichever is shorter. The background investigation must include at a minimum:

(A) fingerprintings and an FBI identification and criminal history records check in accordance with subsection (e) of this section;

(B) verification of true identity. Licensees shall verify the true identity of the individual applying for unescorted access authorization to ensure that the applicant is who he or she claims to be. A licensee shall review official identification documents (e.g., driver's license; passport; government identification; certificate of birth issued by the state, province, or country of birth) and compare the documents to personal information data provided by the individual to identify any discrepancy in the information. Licensees shall document the type, expiration, and identification number of the identification document, or maintain a photocopy of identifying documents on file in accordance with subsection (g) of this section. Licensees shall certify in writing that the identification was properly reviewed and shall maintain the certification and all related documents for review upon inspection;

(C) employment history verification. Licensees shall complete an employment history verification, including military history. Licensees shall verify the individual's employment with each previous employer for the most recent seven years before the date of application;

(D) verification of education. Licensees shall verify the individual's education during the claimed period;

(E) character and reputation determination. Licensees shall complete reference checks to determine the character and reputation of the individual who has applied for unescorted access authorization. Unless other references are not available, reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. Reference checks under subsections (b) and (c) of this section, this subsection, and subsections (e) - (h) of this section must be limited to whether the individual has been and continues to be trustworthy and reliable;

(F) the licensee shall also, to the extent possible, obtain independent information to corroborate the information provided by the individual (e.g., seek references not supplied by the individual); and

(G) if a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information within a time frame deemed appropriate by the licensee, but at least after 10 business days of the request or if the licensee is unable to reach the entity, the licensee shall document the refusal, unwillingness, or inability in the record of investigation and attempt to obtain the information from an alternate source.

(2) Grandfathering.

(A) Individuals who have been determined to be trustworthy and reliable for unescorted access to category 1 or category 2 quantities of radioactive material under the Fingerprint Orders may continue to have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. These individuals shall be subject to the reinvestigation requirement.

(B) Individuals who have been determined to be trustworthy and reliable under the provisions of 10 CFR Part 73 or the Security Orders for access to safeguards information, safeguards information-modified handling, or risk-significant material may have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. The licensee shall document that the individual was determined to be trustworthy and reliable under



the provisions of 10 CFR Part 73 or a Security Order. Security Order, in this context, refers to any order that was issued by the United States Nuclear Regulatory Commission (NRC) that required fingerprints and an FBI criminal history records check for access to safeguards information, safeguards information-modified handling, or risk significant material such as special nuclear material or large quantities of uranium hexafluoride. These individuals shall be subject to the reinvestigation requirement.

(3) Reinvestigations. Licensees shall conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigation shall consist of fingerprinting and an FBI identification and criminal history records check in accordance with subsection (e) of this section. The reinvestigations must be completed within 10 years of the date on which these elements were last completed.

(e) Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material.

(1) General performance objective and requirements.

(A) Except for those individuals listed in subsection (f) of this section and those individuals grandfathered under subsection (d)(2) of this section, each licensee subject to the provisions of subsections (b) - (d) of this section, this subsection, and subsections (f) - (h) of this section shall fingerprint each individual who is to be permitted unescorted access to category 1 or category 2 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the NRC for transmission to the FBI. The licensee shall use the information received from the FBI as part of the required background investigation to determine whether to grant or deny further unescorted access to category 1 or category 2 quantities of radioactive materials for that individual.

(B) The licensee shall notify each affected individual that his or her fingerprints will be used to secure a review of his or her criminal history record and shall inform him or her of the procedures for revising the record or adding explanations to the record.

(C) Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to category 1 or category 2 quantities of radioactive materials if:

(i) the individual returns to the same facility that granted unescorted access authorization within 365 days of the termination of his or her unescorted access authorization; and

(ii) the previous access was terminated under favorable conditions.

(D) Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to category 1 or category 2 quantities of radioactive material, access to safeguards information, or safeguards information-modified handling by another licensee, based upon a background investigation conducted under this section, the Fingerprint Orders, or 10 CFR Part 73. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access in accordance with the provisions of subsection (g)(3) of this section.

(E) Licensees shall use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling.

(2) Prohibitions.

(A) Licensees may not base a final determination to deny an individual unescorted access authorization to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:

(i) an arrest more than one year old for which there is no information of the disposition of the case; or

(ii) an arrest that resulted in dismissal of the charge or an acquittal.

(B) Licensees may not use information received from a criminal history records check obtained under subsections (b) - (d) of this section, this subsection, and subsections (f) - (h) of this section in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States nor shall licensees use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, gender, or age.

(3) Procedures for processing of fingerprint checks.

(A) For the purpose of complying with subsections (b) - (d) of this section, this subsection, and subsections (f) - (h) of this section, licensees shall use an appropriate method listed in 10 CFR §37.7 to submit to the United States Nuclear Regulatory Commission, Director, Division of Physical and Cyber Security Policy [Facilities and Security], 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop T-8B20 [T-03B46M], Rockville, Maryland 20852 [20852-2738], one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by emailing [MAILSVS.Resource@nrc.gov](mailto:MAILSVS.Resource@nrc.gov). [writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by calling (630) 829-9565; or by e-mail to [FORMS.Resource@nrc.gov](mailto:FORMS.Resource@nrc.gov).] Guidance on submitting electronic fingerprints can be found at <https://www.nrc.gov/security/chp.html> [<http://www.nrc.gov/site-help/e-submittals.html>].

(B) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Division of Physical and Cyber Security Policy by e-mailing [Crimhist.Resource@nrc.gov](mailto:Crimhist.Resource@nrc.gov) [Security Branch, Division of Facilities and Security at (301) 415-7513].) Combined payment for multiple applications is acceptable. The NRC publishes the amount of the fingerprint check application fee on the NRC's public website. (To find the current fee amount, go to the Licensee Criminal History Records Checks & Firearms Background Check information page at <https://www.nrc.gov/security/chp.html> [Electronic Submittals page at <http://www.nrc.gov/site-help/e-submittals.html>] and see the link for How do I determine how much to pay for the request? [the Criminal History under Electronic Submission Systems].)

(C) The NRC will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks.

(f) Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials.

(1) Fingerprinting, and the identification and criminal history records checks required by §149 of the Atomic Energy Act of

1954, as amended, and other elements of the background investigation, are not required for the following individuals prior to granting unescorted access to category 1 or category 2 quantities of radioactive materials:

(A) an employee of the NRC or of the Executive Branch of the United States (U.S.) Government who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(B) a Member of Congress;

(C) an employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(D) the Governor of a State or his or her designated State employee representative;

(E) Federal, State, or local law enforcement personnel;

(F) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

(G) Agreement State employees conducting security inspections on behalf of the NRC under an agreement executed under §274.i. of the Atomic Energy Act;

(H) representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC;

(I) emergency response personnel who are responding to an emergency;

(J) commercial vehicle drivers for road shipments of category 1 and category 2 quantities of radioactive material;

(K) package handlers at transportation facilities such as freight terminals and railroad yards;

(L) any individual who has an active federal security clearance, provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that granted the federal security clearance or reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material; and

(M) any individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for unescorted access to category 1 or category 2 quantities of radioactive material. Written verification from the service provider must be provided to the licensee. The licensee shall retain the documentation for a period of three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material; and

(2) Fingerprinting, and the identification and criminal history records checks required by §149 of the Atomic Energy Act of 1954, as amended, are not required for an individual who has had a favorably adjudicated U.S. Government criminal history records check within the last five years, under a comparable U.S. Government program involving fingerprinting and an FBI identification and criminal history records check provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of three years from the date the individual no longer requires

unescorted access to category 1 or category 2 quantities of radioactive material. These programs include, but are not limited to:

(A) National Agency Check;

(B) Transportation Worker Identification Credentials under 49 CFR Part 1572;

(C) Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances under 27 CFR Part 555;

(D) Health and Human Services security risk assessments for possession and use of select agents and toxins under 42 CFR Part 73;

(E) Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license under 49 CFR Part 1572; and

(F) Customs and Border Protection's Free and Secure Trade Program.

(g) Protection of information.

(1) Each licensee who obtains background information on an individual under subsections (b) - (f) of this section, this subsection, and subsection (h) of this section shall establish and maintain a system of files and written procedures for protection of the records and the personal information from unauthorized disclosure.

(2) The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his or her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need to know.

(3) The personal information obtained on an individual from a background investigation may be provided to another licensee:

(A) upon the individual's written request to the licensee holding the data to disseminate the information contained in his or her file; and

(B) the recipient licensee verifies information such as name, date of birth, social security number, gender, and other applicable physical characteristics.

(4) The licensee shall make background investigation records obtained under subsections (b) - (f) of this section, this subsection, and subsection (h) of this section available for examination by an authorized representative of the commission to determine compliance with the regulations and laws.

(5) The licensee shall retain all fingerprint and criminal history records (including data indicating no record) received from the FBI or a copy of these records if the individual's file has been transferred on an individual for three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(h) Access authorization program review.

(1) Each licensee shall be responsible for the continuing effectiveness of the access authorization program. Each licensee shall ensure that access authorization programs are reviewed to confirm compliance with the requirements of subsections (b) - (g) of this section and this subsection and that comprehensive actions are taken to correct any noncompliance identified. The review program shall evaluate all

program performance objectives and requirements. Each licensee shall periodically (at least annually) review the access authorization program content and implementation.

(2) The results of the reviews, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the access authorization program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including re-assessment of the deficient areas where indicated.

(3) Review records must be maintained for three years.

(i) Security program.

(1) Applicability.

(A) Each licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material shall establish, implement, and maintain a security program in accordance with the requirements of this subsection and subsections (j) - (q) of this section.

(B) An applicant for a new license, and each licensee that would become newly subject to the requirements of this subsection and subsections (j) - (q) of this section upon application for modification of its license, shall implement the requirements of this subsection and subsections (j) - (q) of this section, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

(C) Any licensee that has not previously implemented the Security Orders or been subject to the provisions of this subsection and subsections (j) - (q) of this section shall provide written notification to the commission at least 90 days before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

(2) General performance objective. Each licensee shall establish, implement, and maintain a security program that is designed to monitor and, without delay, detect, assess, and respond to an actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive material.

(3) Program features. Each licensee's security program must include the program features, as appropriate, described in subsections (j) - (p) of this section.

(j) General security program requirements.

(1) Security plan.

(A) Each licensee identified in subsection (i)(1) of this section shall develop a written security plan specific to its facilities and operations. The purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by subsection (i) of this section, this subsection, and subsections (k) - (q) of this section. The security plan must, at a minimum:

(i) describe the measures and strategies used to implement the requirements of subsection (i) of this section, this subsection, and subsections (k) - (q) of this section; and

(ii) identify the security resources, equipment, and technology used to satisfy the requirements of subsection (i) of this section, this subsection, and subsections (k) - (q) of this section.

(B) The security plan must be reviewed and approved by the individual with overall responsibility for the security program.

(C) A licensee shall revise its security plan as necessary to ensure the effective implementation of the executive director's requirements. The licensee shall ensure that:

(i) the revision has been reviewed and approved by the individual with overall responsibility for the security program; and

(ii) the affected individuals are instructed on the revised plan before the changes are implemented.

(D) The licensee shall retain a copy of the current security plan as a record for three years after the security plan is no longer required. If any portion of the plan is superseded, the licensee shall retain the superseded material for three years after the record is superseded.

(2) Implementing procedures.

(A) The licensee shall develop and maintain written procedures that document how the requirements of subsection (i) of this section, this subsection, and subsections (k) - (q) of this section and the security plan will be met.

(B) The implementing procedures and revisions to these procedures must be approved in writing by the individual with overall responsibility for the security program.

(C) The licensee shall retain a copy of the current procedure as a record for three years after the procedure is no longer needed. Superseded portions of the procedure must be retained for three years after the record is superseded.

(3) Training.

(A) Each licensee shall conduct training to ensure that those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The training must include instruction in:

(i) the licensee's security program and procedures to secure category 1 or category 2 quantities of radioactive material and the purposes and functions of the security measures employed;

(ii) the responsibility to report promptly to the licensee any condition that causes or may cause a violation of the requirements of the commission, the NRC, or any Agreement State;

(iii) the responsibility of the licensee to report promptly to the LLEA and licensee any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material; and

(iv) the appropriate response to security alarms.

(B) In determining those individuals who shall be trained on the security program, the licensee shall consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of category 1 or category 2 quantities of radioactive material. The extent of the training must be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material.

(C) Refresher training must be provided at a frequency not to exceed 12 months and when significant changes have been made to the security program. This training must include:

(i) review of the training requirements of this paragraph and any changes made to the security program since the last training;

(ii) reports on any relevant security issues, problems, and lessons learned;

(iii) relevant results of commission inspections; and

(iv) relevant results of the licensee's program review and testing and maintenance.

(D) The licensee shall maintain records of the initial and refresher training for three years from the date of the training. The training records must include dates of the training, topics covered, a list of licensee personnel in attendance, and related information.

(4) Protection of information.

(A) Licensees authorized to possess category 1 or category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

(B) Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan, ~~and~~ implementing procedures, and the list of individuals that have been approved for unescorted access.

(C) Before granting an individual access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access, licensees shall:

(i) evaluate an individual's need to know the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access; and

(ii) if the individual has not been authorized for unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee must complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in subsection (d)(1)(B) - (G) of this section.

(D) Licensees need not subject the following individuals to the background investigation elements for protection of information:

(i) the categories of individuals listed in subsection (f)(1) of this section; or

(ii) security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in subsection (d)(1)(B) - (G) of this section, has been provided by the security service provider.

(E) The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access.

(F) Licensees shall maintain a list of persons currently approved for access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access. When a licensee determines that a person no longer needs access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible,

but no later than ~~[no-later-than]~~ seven working days, and take prompt measures to ensure that the individual is unable to obtain the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access.

(G) When not in use, the licensee shall store its security plan, ~~and~~ implementing procedures, and the list of individuals that have been approved for unescorted access in a manner to prevent unauthorized access. Information stored in non-removable electronic form must be password protected.

(H) The licensee shall retain as a record for three years after the document is no longer needed:

(i) a copy of the information protection procedures; and

(ii) the list of individuals approved for access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access.

(k) LLEA coordination.

(1) A licensee subject to subsections (i) and (j) of this section, this subsection, and subsections (l) - (q) of this section shall coordinate, to the extent practicable, with an LLEA for responding to threats to the licensee's facility, including any necessary armed response. The information provided to the LLEA must include:

(A) a description of the facilities and the category 1 and category 2 quantities of radioactive materials along with a description of the licensee's security measures that have been implemented to comply with subsections (i) and (j) of this section, this subsection, and subsections (l) - (q) of this section; and

(B) a notification that the licensee will request a timely armed response by the LLEA to any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of material.

(2) The licensee shall notify the executive director within three business days if:

(A) the LLEA has not responded to the request for coordination within 60 days of the coordination request; or

(B) the LLEA notifies the licensee that the LLEA does not plan to participate in coordination activities.

(3) The licensee shall document its efforts to coordinate with the LLEA. The documentation must be kept for three years.

(4) The licensee shall coordinate with the LLEA at least every 12 months, or when changes to the facility design or operation adversely affect the potential vulnerability of the licensee's material to theft, sabotage, or diversion.

(l) Security zones.

(1) Licensees shall ensure that all aggregated category 1 and category 2 quantities of radioactive material are used or stored within licensee established security zones. Security zones may be permanent or temporary.

(2) Temporary security zones must be established as necessary to meet the licensee's transitory or intermittent business activities, such as periods of maintenance, source delivery, and source replacement.

(3) Security zones must, at a minimum, allow unescorted access only to approved individuals through:

(A) isolation of category 1 and category 2 quantities of radioactive materials by the use of continuous physical barriers that al-

low access to the security zone only through established access control points. A physical barrier is a natural or man-made structure or formation sufficient for the isolation of the category 1 or category 2 quantities of radioactive material within a security zone; or

(B) direct control of the security zone by approved individuals at all times; or

(C) a combination of continuous physical barriers and direct control.

(4) For category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange, the licensee shall, at a minimum, provide sufficient individuals approved for unescorted access to maintain continuous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow such activities.

(5) Individuals not approved for unescorted access to category 1 or category 2 quantities of radioactive material must be escorted by an approved individual when in a security zone.

(m) Monitoring, detection, and assessment.

(1) Monitoring and detection.

(A) Licensees shall establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into its security zones. Licensees shall provide the means to maintain continuous monitoring and detection capability in the event of a loss of the primary power source or provide for an alarm and response in the event of a loss of the capability to continuously monitor and detect unauthorized entries.

(B) Monitoring and detection must be performed by:

(i) a monitored intrusion detection system that is linked to an onsite or offsite central monitoring facility;

(ii) electronic devices for intrusion detection alarms that will alert nearby facility personnel;

(iii) a monitored video surveillance system;

(iv) direct visual surveillance by approved individuals located within the security zone; or

(v) direct visual surveillance by a licensee designated individual located outside the security zone.

(C) A licensee subject to subsections (i) - (l) of this section, this subsection, and subsections (n) - (q) of this section shall also have a means to detect unauthorized removal of the radioactive material from the security zone. This detection capability must provide:

(i) for category 1 quantities of radioactive material, immediate detection of any attempted unauthorized removal of the radioactive material from the security zone. Such immediate detection capability must be provided by:

(I) electronic sensors linked to an alarm;

(II) continuous monitored video surveillance; or

(III) direct visual surveillance.

(ii) For category 2 quantities of radioactive material, weekly verification through physical checks, tamper indicating devices, use, or other means to ensure that the radioactive material is present.

(2) Assessment. Licensees shall immediately assess each actual or attempted unauthorized entry into the security zone to deter-

mine whether the unauthorized access was an actual or attempted theft, sabotage, or diversion.

(3) Personnel communications and data transmission. For personnel and automated or electronic systems supporting the licensee's monitoring, detection, and assessment systems, licensees shall:

(A) maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems; and

(B) provide an alternative communication capability for personnel, and an alternative data transmission and processing capability, in the event of a loss of the primary means of communication or data transmission and processing. Alternative communications and data transmission systems may not be subject to the same failure modes as the primary systems.

(4) Response. Licensees shall immediately respond to any actual or attempted unauthorized access to the security zones, or actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material at licensee facilities or temporary job sites. For any unauthorized access involving an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, the licensee's response shall include requesting, without delay, an armed response from the LLEA.

(n) Maintenance and testing.

(1) Each licensee subject to subsections (i) - (m) of this section, this subsection, and subsections (o) - (q) of this section shall implement a maintenance and testing program to ensure that intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material are maintained in operable condition and capable of performing their intended function when needed. The equipment relied on to meet the security requirements of this section must be inspected and tested for operability and performance at the manufacturer's suggested frequency. If there is no manufacturer's suggested frequency, the testing must be performed at least annually, not to exceed 12 months.

(2) The licensee shall maintain records on the maintenance and testing activities for three years.

(o) Requirements for mobile devices. Each licensee that possesses mobile devices containing category 1 or category 2 quantities of radioactive material must:

(1) have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee; and

(2) for devices in or on a vehicle or trailer, unless the health and safety requirements for a site prohibit the disabling of the vehicle, the licensee shall utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee. Licensees shall not rely on the removal of an ignition key to meet this requirement.

(p) Security program review.

(1) Each licensee shall be responsible for the continuing effectiveness of the security program. Each licensee shall ensure that the security program is reviewed to confirm compliance with the requirements of subsections (i) - (o) of this section, this subsection, and subsection (q) of this section and that comprehensive actions are taken to correct any noncompliance that is identified. The review must include the radioactive material security program content and implementation.

Each licensee shall periodically (at least annually) review the security program content and implementation.

(2) The results of the review, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the security program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(3) The licensee shall maintain the review documentation for three years.

(q) Reporting of events.

(1) The licensee shall immediately notify the LLEA after determining that an unauthorized entry resulted in an actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. As soon as possible after initiating a response, but not at the expense of causing delay or interfering with the LLEA response to the event, the licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224. In no case shall the notification to the commission or the NRC be later than four hours after the discovery of any attempted or actual theft, sabotage, or diversion.

(2) The licensee shall assess any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and notify the LLEA as appropriate. As soon as possible but not later than four hours after notifying the LLEA, the licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224.

(3) The initial telephonic notification required by paragraph (1) of this subsection must be followed, within a period of 30 days, by a written report submitted to the executive director. The report must include sufficient information for commission analysis and evaluation, including identification of any necessary corrective actions to prevent future instances.

(r) Additional requirements for transfer of category 1 and category 2 quantities of radioactive material. A licensee transferring a category 1 or category 2 quantity of radioactive material to a licensee of the commission, the NRC, or an Agreement State shall meet the license verification provisions listed in this subsection instead of those listed in §336.331(d) of this title (relating to Transfer of Radioactive Material):

(1) Any licensee transferring category 1 quantities of radioactive material to a licensee of the commission, the NRC, or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred and that the licensee is authorized to receive radioactive material at the location requested for delivery. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(2) Any licensee transferring category 2 quantities of radioactive material to a licensee of the commission, the NRC, or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. If the verification is conducted by contacting the license issuing authority, the transferor

shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(3) In an emergency where the licensee cannot reach the license issuing authority and the license verification system is nonfunctional, the licensee may accept a written certification by the transferee that it is authorized by license to receive the type, form, and quantity of radioactive material to be transferred. The certification must include the license number, current revision number, issuing agency, expiration date, and for a category 1 shipment the authorized address. The licensee shall keep a copy of the certification. The certification must be confirmed by use of the NRC's license verification system or by contacting the license issuing authority by the end of the next business day.

(4) The transferor shall keep a copy of the verification documentation as a record for three years.

(s) Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit. The shipping licensee shall be responsible for meeting the requirements of subsection (r) of this section, this subsection, and subsections (t) - (w) of this section unless the receiving licensee has agreed in writing to arrange for the in-transit physical protection required under subsection (r) of this section, this subsection, and subsections (t) - (w) of this section.

(t) Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material.

(1) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 1 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall:

(A) preplan and coordinate shipment arrival and departure times with the receiving licensee;

(B) preplan and coordinate shipment information with the governor or the governor's designee of any state through which the shipment will pass to:

(i) discuss the state's intention to provide law enforcement escorts; and

(ii) identify safe havens; and

(C) document the preplanning and coordination activities.

(2) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 2 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall coordinate the shipment no-later-than arrival time and the expected shipment arrival with the receiving licensee. The licensee shall document the coordination activities.

(3) Each licensee who receives a shipment of a category 2 quantity of radioactive material shall confirm receipt of the shipment with the originator. If the shipment has not arrived by the no-later-than arrival time, the receiving licensee shall notify the originator.

(4) Each licensee, who transports or plans to transport a shipment of a category 2 quantity of radioactive material, and determines that the shipment will arrive after the no-later-than arrival time provided pursuant to paragraph (2) of this subsection, shall promptly notify the receiving licensee of the new no-later-than arrival time.

(5) The licensee shall retain a copy of the documentation for preplanning and coordination and any revision thereof as a record for three years.

(u) Advance notification of shipment of category 1 quantities of radioactive material. As specified in paragraphs (1) and (2) of this

subsection, each licensee shall provide advance notification to the NRC and the governor of a state, or the governor's designee, of the shipment of licensed material in a category 1 quantity, through or across the boundary of the state, before the transport or delivery to a carrier for transport of the licensed material outside the confines of the licensee's facility or other place of use or storage.

(1) Procedures for submitting advance notification.

(A) The notification must be made to the commission and to the office of each appropriate governor or governor's designee. The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the NRC's website at <https://scp.nrc.gov/special/designee.pdf>. A list of the contact information is also available upon request from the Director, Division of Materials Safety, Security, State, and Tribal [Material, State, Tribal, and Rulemaking] Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(B) A notification delivered by mail must be post-marked at least seven days before transport of the shipment commences at the shipping facility.

(C) A notification delivered by any means other than mail must reach the commission at least four days before the transport of the shipment commences and must reach the office of the governor or the governor's designee at least four days before transport of a shipment within or through the state.

(2) Information to be furnished in advance notification of shipment. Each advance notification of shipment of category 1 quantities of radioactive material must contain the following information, if available at the time of notification:

(A) the name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material;

(B) the license numbers of the shipper and receiver;

(C) a description of the radioactive material contained in the shipment, including the radionuclides and quantity;

(D) the point of origin of the shipment and the estimated time and date that shipment will commence;

(E) the estimated time and date that the shipment is expected to enter each state along the route;

(F) the estimated time and date of arrival of the shipment at the destination; and

(G) a point of contact, with a telephone number, for current shipment information.

(3) Revision notice.

(A) The licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later than commencement of the shipment, to the governor of the state or the governor's designee and to the commission.

(B) A licensee shall promptly notify the governor of the state or the governor's designee of any changes to the information provided in accordance with paragraph (2) of this subsection and subparagraph (A) of this paragraph. The licensee shall also immediately notify the commission of any such changes.

(4) Cancellation notice. Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the governor of each state or to the governor's designee

previously notified and to the commission. The licensee shall send the cancellation notice before the shipment would have commenced or as soon thereafter as possible. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being cancelled.

(5) Records. The licensee shall retain a copy of the advance notification and any revision and cancellation notices as a record for three years.

(6) Protection of information. State officials, State employees, and other individuals, whether or not licensees of the commission, NRC, or an Agreement State, who receive schedule information of the kind specified in paragraph (2) of this subsection shall protect that information against unauthorized disclosure as specified in subsection (j)(4) of this section.

(v) Requirements for physical protection of category 1 and category 2 quantities of radioactive material during shipment.

(1) Shipments by road.

(A) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(i) Ensure that movement control centers are established that maintain position information from a remote location. These control centers must monitor shipments 24 hours a day, seven days a week, and have the ability to communicate immediately, in an emergency, with the appropriate law enforcement agencies.

(ii) Ensure that redundant communications are established that allow the transport to contact the escort vehicle (when used) and movement control center at all times. Redundant communications may not be subject to the same interference factors as the primary communication.

(iii) Ensure that shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. A movement control center must provide positive confirmation of the location, status, and control over the shipment. The movement control center must be prepared to promptly implement preplanned procedures in response to deviations from the authorized route or a notification of actual, attempted, or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(iv) Provide an individual to accompany the driver for those highway shipments with a driving time period greater than the maximum number of allowable hours of service in a 24-hour duty day as established by the Department of Transportation Federal Motor Carrier Safety Administration. The accompanying individual may be another driver.

(v) Develop written normal and contingency procedures to address:

(I) notifications to the communication center and law enforcement agencies;

(II) communication protocols. Communication protocols must include a strategy for the use of authentication codes and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost;

(III) loss of communications; and

(IV) responses to an actual or attempted theft or diversion of a shipment.

(vi) Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall ensure that drivers, accompanying personnel, and movement control center personnel have access to the normal and contingency procedures.

(B) Each licensee that transports category 2 quantities of radioactive material shall maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance.

(C) Each licensee who delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(i) use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control;

(ii) use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(2) Shipments by rail.

(A) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(i) Ensure that rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to the licensee, third-party, or railroad communications center. The communications center shall provide positive confirmation of the location of the shipment and its status. The communications center shall implement preplanned procedures in response to deviations from the authorized route or to a notification of actual, attempted, or suspicious activities related to the theft or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(ii) Ensure that periodic reports to the communications center are made at preset intervals.

(B) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(i) use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control;

(ii) use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(3) Investigations. Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall immediately conduct an investigation upon the discovery that a category 1 shipment is lost or missing. Each licensee who makes arrangements for the shipment of category 2 quantities of radioactive material shall immediately conduct an investigation, in coordination with the receiving licensee, of any shipment that has not arrived by the designated no-later-than arrival time.

(w) Reporting of events.

(1) The shipping licensee shall notify the appropriate LLEA and the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 within one hour of its determination that a shipment of category 1 quantities of radioactive material is lost or missing. The appropriate LLEA would be the law enforcement agency in the area of the shipment's last confirmed location. During the investigation required by subsection (v)(3) of this section, the shipping licensee will provide agreed upon updates to the executive director on the status of the investigation.

(2) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 within four hours of its determination that a shipment of category 2 quantities of radioactive material is lost or missing. If, after 24 hours of its determination that the shipment is lost or missing, the radioactive material has not been located and secured, the licensee shall immediately notify the executive director.

(3) The shipping licensee shall notify the designated LLEA along the shipment route as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a category 1 quantity of radioactive material. As soon as possible after notifying the LLEA, the licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 upon discovery of any actual or attempted theft or diversion of a shipment or any suspicious activity related to the shipment of category 1 radioactive material.

(4) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or any suspicious activity related to the shipment, of a category 2 quantity of radioactive material.

(5) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 and the LLEA as soon as possible upon recovery of any lost or missing category 1 quantities of radioactive material.

(6) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 as soon as possible upon recovery of any lost or missing category 2 quantities of radioactive material.

(7) The initial telephonic notification required by paragraphs (1) - (4) of this subsection must be followed within a period of 30 days by a written report submitted to the executive director. A written report is not required for notifications on suspicious activities required by paragraphs (3) and (4) of this subsection. The report must set forth the following information:

(A) a description of the licensed material involved, including kind, quantity, and chemical and physical form;



(B) a description of the circumstances under which the loss or theft occurred;

(C) a statement of disposition, or probable disposition, of the licensed material involved;

(D) actions that have been taken, or will be taken, to recover the material; and

(E) procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

(8) Subsequent to filing the written report, the licensee shall also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

(x) Form of records. Each record required by this section must be legible throughout the retention period specified in regulation by the licensing authority. The record may be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

(y) Record retention. Licensees shall maintain the records that are required in this section for the period specified by the appropriate regulation. If a retention period is not otherwise specified, these records must be retained until the executive director terminates the facility's license. All records related to this section may be destroyed upon executive director termination of the facility license.

(z) Category 1 and category 2 radioactive materials. The terabecquerel (TBq) values are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The Ci values are provided for practical usefulness only. Figure: 30 TAC §336.357(z) (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 19, 2021.

TRD-202104664

Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2809



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 9. TEXAS COMMISSION ON JAIL STANDARDS

#### CHAPTER 251. GENERAL

##### 37 TAC §251.6

The Texas Commission on Jail Standards proposes to amend §251.6, concerning complaints. The proposed amendment adds language to 37 TAC §251.6 to require county jail administrators to include in any inmate handbook and to prominently display throughout the jail information relating to the procedure for complaint filing, investigation, and resolution.

For the first five-year period, the proposed rule expands an existing regulation. Otherwise, the proposed rule neither creates nor eliminates a government program; implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency; the proposed rule does not require an increase or decrease in fees paid to the agency; the proposed rule does not create a new regulation; the proposed rule expands an existing regulation; the proposed rule neither increases nor decreases the number of individuals subject to the rule's applicability; and the proposed rule neither positively nor adversely affects this state's economy.

Executive Director Brandon Wood has determined that, for each of the first five years of the amendments' effect, the Commission anticipates that the public benefit anticipated as a result of enforcing the amended section is that county jail inmates in county jails under its purview will know the procedure they must follow for filing complaints and the procedure that jails must follow to investigate and follow complaints.

Mr. Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities to comply with the amended rules, as they will not be required to alter their business practices and the rules do not impose any additional costs on those required to comply with the rules.

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

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

This proposed amendment does not affect other rules or statutes.

#### §251.6. Complaints

(a) General. A complaint received by the commission concerning facilities under the commission's purview or the commission and/or its procedures or functions shall be investigated and resolved according to commission internal policies and procedures. All inspection reports, plan reviews and bills for services issued by the commission shall provide instructions for directing complaints to the commission regarding commission functions and procedures.

(b) Filing a Complaint. An individual who has a complaint about a facility under the commission's purview or the commission may file a complaint in any written format or use the commission's prescribed complaint form. The complaint form is available on the agency website and may be submitted electronically or may be obtained by contacting the commission through the agency website, telephone, fax, email, or written request.

(c) Jails shall include information regarding the procedure for filing a complaint, its investigation, and its resolution in the approved inmate handbook and shall display and maintain the information promi-

nently throughout the jail in common areas and other areas frequented by jail inmates.

(d) Public Disclosure. A complaint against a facility under the commission's purview or the commission will only be made available for public disclosure in accordance with Government Code Chapter 552.

[(e) Public Disclosure. A complaint against a facility under the commission's purview or the commission will only be made available for public disclosure in accordance with Government Code Chapter 552.]

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 15, 2021.

TRD-202104552

Brandon Wood

Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 463-5505



## CHAPTER 273. HEALTH SERVICES

### 37 TAC §273.2

The Texas Commission on Jail Standards proposes to amend §273.2, concerning continuity of medications. The proposed amendment adds language to 37 TAC §273.2(12) to require that a county jail inmate with a mental illness be provided with each prescription medication that a qualified medical professional or mental health professional determines is necessary for the care, treatment, or stabilization of a county jail inmate. The amendment also makes a non-substantive change to replace the word "prisoner" with "inmate." The latter is the currently accepted term used in Texas county jails.

For the first five-year period, the proposed rule expands an existing regulation. Otherwise, the proposed rule neither creates nor eliminates a government program; implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency; the proposed rule does not require an increase or decrease in fees paid to the agency; the proposed rule does not create a new regulation; the proposed rule expands an existing regulation; the proposed rule neither increases nor decreases the number of individuals subject to the rule's applicability; and the proposed rule neither positively nor adversely affects this state's economy.

Executive Director Brandon Wood has determined that, for each of the first five years of the amendments' effect, the Commission anticipates that the public benefit anticipated as a result of enforcing the amended section is that county jail inmates in county jails under its purview will know the procedure they must follow for filing complaints and the procedure that jails must follow to investigate and follow complaints.

Mr. Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural

communities to comply with the amended rules, as they will not be required to alter their business practices and the rules do not impose any additional costs on those required to comply with the rules.

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

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

This proposed amendment does not affect other rules or statutes.

#### §273.2. Health Services Plan.

Each facility shall have and implement a written plan, approved by the Commission, for inmate medical, mental, and dental services. The plan shall:

- (1) provide procedures for regularly scheduled sick calls;
- (2) provide procedures for referral for medical, mental, and dental services;
- (3) provide procedures for efficient and prompt care for acute and emergency situations;
- (4) provide procedures for long-term, convalescent, and care necessary for disabled inmates;
- (5) provide procedures for medical, to include obstetrical and gynecological care, mental, nutritional requirements, special housing and appropriate work assignments and the documented use of restraints during labor, delivery and recovery for known pregnant inmates. A sheriff/operator shall notify the commission of any changes in policies and procedures in the provision of health care to pregnant prisoners. A sheriff/operator shall notify the commission of any changes in policies and procedures in the placement of a pregnant prisoner in administrative separation;
- (6) provide procedures for the control, distribution, secured storage, inventory, and disposal of prescriptions, syringes, needles, and hazardous waste containers;
- (7) provide procedures for the distribution of prescriptions in accordance with written instructions from a physician by an appropriate person designated by the sheriff/operator;
- (8) provide procedures for the control, distribution, and secured storage of over-the-counter medications;
- (9) provide procedures for the rights of inmates to refuse health care in accordance with informed consent standards for certain treatments and procedures (in the case of minors, the informed consent of a parent, guardian, or legal custodian, when required, shall be sufficient);
- (10) provide procedures for all examinations, treatments, and other procedures to be performed in a reasonable and dignified manner and place;
- (11) provide that adequate first aid equipment and patient evacuation equipment be on hand at all times;
- (12) provide procedures that shall require that a qualified medical professional shall review as soon as possible any prescription medication an inmate [a prisoner] is taking when the inmate [prisoner] is taken into custody. These procedures shall include providing each

prescription medication that a qualified medical professional or mental health professional determines is necessary for the care, treatment, or stabilization of an inmate with mental illness;

(13) provide procedures that shall give inmates the ability to access a mental health professional at the jail or through a telemental health service 24 hours a day and approved by the Commission by August 31, 2020. If a mental health professional is not present at the county jail at the time or available by telemental health services, then require the jail to provide the inmate access to, at a minimum, a qualified mental health professional (as defined by 25 TAC, §412.303(48)) within a reasonable time;

(14) provide procedures that shall give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional and approved by the Commission by August 31, 2020; and

(15) provide procedures to train staff to identify when a pregnant inmate is in labor and provide access to appropriate care. Inmates shall be promptly transported to a local hospital when they state that they are in labor or are determined by a person at the level of emergency medical technician or above to be in labor.

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 15, 2021.

TRD-202104553  
Brandon Wood  
Executive Director  
Texas Commission on Jail Standards  
Earliest possible date of adoption: January 2, 2022  
For further information, please call: (512) 463-5505



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES**

#### **CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES**

##### **SUBCHAPTER C. COUNCILS, BOARD, AND COMMITTEES**

###### **DIVISION 3. EARLY CHILDHOOD INTERVENTION ADVISORY COMMITTEE**

###### **40 TAC §§101.501, 101.503, 101.505, 101.507, 101.509, 101.511, 101.513, 101.515**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §§101.501, 101.503, 101.505, 101.507, 101.509, 101.511, 101.513, and 101.515 in Texas Administrative Code (TAC) Title 40, Part 2, Chapter 101, Subchapter C, Division 3, concerning Early Childhood Intervention Advisory Committee.

## **BACKGROUND AND PURPOSE**

The purpose of the proposal is to move the ECI advisory committee requirements from 40 TAC Chapter 101 to 1 TAC Chapter 351, Subchapter B, Division 1 and format the advisory committee rule so it aligns with other HHSC advisory committee rules.

The proposed repeal of 40 TAC Chapter 101, Subchapter C, Division 3, will remove rules related to ECI from the chapter related to the Department of Assistive and Rehabilitative Services, which was abolished September 1, 2016, and relocate them to 1 TAC Chapter 351, where other HHSC advisory committee rules are located. The new rules are published elsewhere in this issue of the *Texas Register*.

## **SECTION-BY-SECTION SUMMARY**

Sections 101.501, 101.503, 101.505, 101.507, 101.509, 101.511, 101.513, 101.515 are repealed and the content is relocated to 1 TAC Chapter 351.

## **FISCAL NOTE**

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years the repeal will be in effect, enforcing or administering the repeal 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 proposed repeal will be in effect:

- (1) the proposed repeal will not create or eliminate a government program;
- (2) implementation of the proposed repeal will not affect the number of HHSC employee positions;
- (3) implementation of the proposed repeal will result in no assumed change in future legislative appropriations;
- (4) the proposed repeal will not affect fees paid to HHSC;
- (5) the proposed repeal will not create a new rule;
- (6) the proposed repeal will repeal existing rules;
- (7) the proposed repeal will not change the number of individuals subject to the rules; and
- (8) the proposed repeal will not affect the state's economy.

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

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeal applies only to the ECI advisory committee, which is not a small or micro-business, or a rural community.

## **LOCAL EMPLOYMENT IMPACT**

The proposed repeal will not affect a local economy.

## **COSTS TO REGULATED PERSONS**

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

## **PUBLIC BENEFIT AND COSTS**

Michelle Alletto, Chief Program and Services Officer, has determined that for each year of the first five years the repeal is in

effect, the public benefit will be improved guidance for the advisory committee.

Trey Wood has also determined that for the first five years the repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeal because the proposed repeal does not require changes to current practices.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC HEARING

A public hearing to receive comments on the proposal was held on November 3, 2021, at 1:00 p.m. at the John H. Winters Building, 701 W. 51st Street, Public Hearing Room 125, Austin, Texas, 78751. No comments were received.

A second public hearing was held at the HHSC Executive Council meeting on November 18, 2021, at 1:00 p.m. at the John H. Winters Building, 701 W. 51st Street, Public Hearing Room 125, Austin, Texas, 78751.

Please contact Sharon Stone at [ECI.Policy@hhs.texas.gov](mailto:ECI.Policy@hhs.texas.gov), if you have questions.

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to Sharon Stone at [ECI.Policy@hhs.texas.gov](mailto:ECI.Policy@hhs.texas.gov).

To be considered, comments must be submitted no later than 30 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 the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R037" in the subject line.

#### STATUTORY AUTHORITY

The repeal 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 Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code Chapter 73.

§101.501. *Purpose.*

§101.503. *Legal Authority.*

§101.505. *Definitions.*

§101.507. *Membership Composition.*

§101.509. *Tasks.*

§101.511. *Meetings.*

§101.513. *Compensatory Per Diem.*

§101.515. *Absences from Advisory Committee Meetings.*

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 19, 2021.

TRD-202104675

Karen Ray

Chief Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 438-5031

## PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

### CHAPTER 367. CONTINUING EDUCATION

#### 40 TAC §§367.1 - 367.3

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §367.1, concerning Continuing Education; §367.2, concerning Categories of Education; and §367.3, concerning Continuing Education Audit. The amendments are proposed to revise current continuing education requirements and add activities eligible for continuing education credit.

The amendments to §367.2, Categories of Education, revise current continuing education requirements and include cleanups and clarifications. The revisions include the substitution of the phrase "Creation of a new" with "Development of a" in an item concerning the development of a formal academic course or courses from an occupational therapy program. Such a change will allow licensees to count the development of a course or courses, which includes the creation of a new course or courses, for continuing education credit. The amendments add that the required documentation for certain categories of continuing education, such as the development of a formal academic course from an occupational therapy program or the development of publications, includes an attestation by the licensee of the dates and duration of the corresponding activities completed. This documentation will ensure that licensees attest to the activities they have completed for credit for such categories. The revisions also include the replacement of an item concerning the development of practice-related or instructional materials using alternative media by an item concerning the development of practice-related or instructional software.

The amendments to §367.2 would add additional categories of continuing education and activities eligible for continuing education. For example, the amendments would add that licensees may count the development of a professional or community/service presentation for continuing education credit.

The amendments include changes that would allow licensees to count an independent study for continuing education. Due to the change, the amendments also include the removal of the phrase "Reading journals" from a provision in §367.1, Continuing Education, concerning unacceptable activities not eligible for

continuing education. Continuing education activities completed by the licensee for license renewal shall be acceptable if falling under one or more of the categories of continuing education activities included in §367.2, Categories of Education, and meeting further requirements of Chapter 367, Continuing Education. The phrase "Reading journals" has been removed as part of the proposal, however, to reduce possible confusion concerning the new independent study category and the activities that may be counted for such, which may include the reading of journals, provided such meets other requirements of that category.

Amendments to §367.3, Continuing Education Audit, revise continuing education documentation to clarify and expand the items that may be included for such. A change to the section, with regard to items that may serve as continuing education documentation, includes striking "an official transcript" and replacing such with "transcripts." Additional changes include the information that must be on continuing education documentation. The section currently includes that documentation must include the signature of the authorized signer. The amendments would add that if an area designated for the signature of the authorized signer is not included, the official seal, letterhead, or logo of the authorized signer may be included, instead.

#### FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

#### LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

#### PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be the cleanup, clarification, and refinement of existing occupational therapy regulations concerning continuing education, the addition of further activities eligible for continuing education for licensees, and the expansion of items that may meet continuing education documentation requirements. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments.

#### ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

#### TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by these proposed amendments and that these amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would oth-

erwise exist in the absence of government action. As a result, these amendments do not constitute a taking under Texas Government Code §2007.043.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The Board has determined under Texas Government Code §2001.0221 that during the first five years the rules would be in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create new regulations in the Occupational Therapy Rules concerning the inclusion of additional categories eligible for continuing education;
- (6) the rules will not repeal an existing regulation; the rules will expand existing regulations by requiring that documentation for certain categories includes an attestation by the licensee regarding the completion of corresponding activities, by expanding the opportunity for continuing education credit under certain categories, and by expanding what may be included for and on continuing education documentation; the rules will limit an existing regulation by removing information concerning the development of practice related or instructional materials using alternative media and replacing such with an item concerning the development of practice related or instructional software;
- (7) the rules will not increase or decrease the number of individuals subject to the rules' applicability; and
- (8) the rules will neither positively nor adversely affect this state's economy.

#### COSTS TO REGULATED PERSONS

The agency determined that the rules are not subject to Texas Government Code §2001.0045 as the rules do not impose a cost on regulated persons. In addition, the rules do not impose a cost on another state agency, a special district, or a local government.

#### ENVIRONMENTAL IMPACT STATEMENT

The Board has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

#### PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to [lea@ptot.texas.gov](mailto:lea@ptot.texas.gov) within 30 days following the publication of this notice in the *Texas Register*. It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to

carry out its duties under Chapter 454, and proposed under Texas Occupations Code §454.254, Mandatory Continuing Education, which authorizes the Board to assess the continuing education needs of license holders, establish a minimum number of hours of continuing education required to renew a license, and develop a process to evaluate and approve continuing education courses.

#### CROSS REFERENCE TO STATUTE

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

#### §367.1. Continuing Education.

(a) The Act mandates licensee participation in a continuing education program for license renewal. All activities taken to complete this requirement must meet the definition of continuing education as outlined in this section. The licensee is solely responsible for keeping accurate documentation of all continuing education activities and for selecting continuing education as per the requirements in this chapter.

(1) Definition of Continuing Education; also known as CE. Continuing Education - Professional development activities that meet the requirements in this chapter and directly concern one or more of the following:

- (A) occupational therapy practice as defined in §362.1 of this title (relating to Definitions);
- (B) health conditions treated by occupational therapy;
- (C) ethical or regulatory matters in occupational therapy; or
- (D) occupational therapy documentation or reimbursement for occupational therapy services.

(2) Unacceptable Activities. Unacceptable professional development activities not eligible for continuing education include but are not limited to:

- (A) Any non-instructional time frames such as breaks, meals, introductions, and pre/post testing.
- (B) Business meetings.
- (C) Exhibit hall attendance.
- ~~(D) Reading journals.~~
- (D) ~~[(E)]~~ Courses that provide information about the work setting's philosophy, policies, or procedures or designed to educate employees about a specific work setting.
- (E) ~~[(F)]~~ Courses in topics concerning professionalism or customer service.
- (F) ~~[(G)]~~ Courses such as: social work; defensive driving; water safety; team building; GRE, GMAT, MCAT preparation; general foreign languages; disposal of hazardous waste; patient privacy; CPR; First Aid; HIPAA; and FERPA.

(b) Required Continuing Education Hours.

- (1) Unless otherwise specified in this chapter, 1 hour of continuing education is equal to 1 contact hour.
- (2) All licensees must complete a minimum of 24 contact hours every two years during the period of time the license is current in order to renew the license. Licensees must provide proof of completion of contact hours at the Board's request.
- (3) Training on Human Trafficking. As part of the minimum hours of required continuing education for each renewal,

licensees must complete a training course on human trafficking that is approved by the Health and Human Services Commission. Documentation of completion of a training course is a certificate of completion or letter of verification indicating credit awarded.

(A) Pre-Approved Credit and Additional Credit. The completion of one training course per renewal period to meet the training requirement is pre-approved for continuing education credit up to a maximum of 2 contact hours. Additional continuing education credit may be earned for a training course exceeding 2 hours if the additional hours meet the requirements of this chapter.

(B) Repeated Course. A specific training course completed during one renewal period to meet the training requirement may be completed again during the next renewal period to meet the training requirement for that next renewal. Up to a maximum of 2 contact hours from the repeated course are exempt from subsection (c) of this section and may be applied toward license renewal.

(4) Licensees who submit their renewal with all required items prior to the month when their license expires may count CE completed during their license's expiration month for their next renewal period.

(c) Each continuing education activity may be counted only one time in two renewal cycles.

(d) Activities approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved for CE credit for license renewal. The Board will review its approval process and continuation thereof for educational activities at least every five years.

(e) Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of the program.

#### §367.2. Categories of Education.

Continuing education activities completed by the licensee for license renewal shall be acceptable if falling under one or more of the following categories and meeting further requirements in this chapter.

(1) Formal academic courses from an occupational therapy program.

(A) Completion of course work at or through an accredited college or university shall be counted as follows: 3 contact hours for each credit hour of a course with a grade of A, B, C, and/or P (Pass). Thus a 3 credit course counts for 9 contact hours. No [; ~~no~~] maximum. Documentation shall include a transcript from the accredited college or university.

(B) Development of a [~~Creation of a new~~] course or courses at or through an accredited college or university may be counted for up to a maximum of 10 contact hours [~~maximum~~]. Documentation shall be a letter from the Program Director and an attestation by the licensee of the dates and duration of the development activities completed.

(2) In-service educational programs, training programs, institutes, seminars, workshops, facility-based [~~facility based~~] courses, internet-based courses, conferences, and home-study courses with specified learning objectives. Hour for hour credit on program content only, no maximum. Documentation shall include a certificate of completion or letter of verification.

(3) Development of publications or software, or grant/research activities. Documentation shall include an attestation by the licensee of the dates and duration of the development or research/grant activities completed. For publications/software, documentation shall

also include a copy of the actual publication/software or a letter of verification documenting acceptance for publication or distribution. For grant/research proposals, documentation shall also include the title page and receipt of proposal.

~~[(3)] [Development of publications, media materials, or grant/research activities. Documentation shall include a copy of the actual publication or media material(s) or a letter of verification documenting acceptance for publication or distribution, or title page and receipt of grant or research proposal.]~~

(A) Published scholarly work in a peer-review journal.

~~(i) Primary or second author, up to a maximum of 15 contact hours [maximum].~~

~~(ii) Other author, consultant, reviewer, or editor, up to a maximum of 5 contact hours [maximum].~~

(B) Grant or research proposals accepted for consideration.

~~(i) Principal investigator or co-principal investigator, up to a maximum of 10 contact hours [maximum].~~

~~(ii) Consultant or reviewer, up to a maximum of 4 contact hours [maximum].~~

(C) Published book.

~~(i) Primary author or book editor, up to a maximum of 15 contact hours [maximum].~~

~~(ii) Second or other author, up to a maximum of 7 contact hours [maximum].~~

~~(iii) Consultant or reviewer, up to a maximum of 5 contact hours [maximum].~~

(D) Published book chapter or monograph.

~~(i) Primary author, up to a maximum of 7 contact hours [maximum].~~

~~(ii) Second or other author, consultant, reviewer, or editor, up to a maximum of 2 contact hours [maximum].~~

(E) Author, consultant, reviewer, or editor of other practice related publications such as newsletters, blogs, and trade magazines, up to a maximum of 2 contact hours [maximum].

~~(F) Developer of practice-related or instructional software designed to advance the professional skills of others (not for proprietary use), up to a maximum of 15 contact hours.~~

~~[(F) Developer of practice-related or instructional materials using alternative media such as video, audio, or software programs or applications to advance the professional skills of others (not for proprietary use); 15 contact hours maximum.]~~

(4) Presentations by licensee. Documentation shall include verification of presentation noting the date, title, and number of contact hours of the presentation, presenter(s), and type of presentation (i.e., 2 hour poster, 3 hour workshop). Any presentation may be counted only once.

(A) Professional presentation, e.g. in-services, workshops, institutes. Hour for hour credit. Up to a maximum of 10 contact hours [maximum].

(B) Community/Service organization presentation. Hour for hour credit. Up to a maximum of 10 contact hours [maximum].

~~(C) A licensee may count the development of a professional presentation or a community/service organization presentation toward the maximum credit available for the presentation type. Documentation shall include an attestation by the licensee of the development activities completed, including the date and duration of each. The development of any presentation may be counted only once.~~

(5) Supervision of students completing an accredited educational program or re-entry course.

(A) A licensee may earn up to a maximum of 10 contact hours for student supervision per renewal period.

(B) Fieldwork Supervision.

~~(i) Fieldwork Level 1: A licensee may earn .025 contact hours for each hour of supervision provided to a student.~~

~~(ii) Fieldwork Level 2:~~

~~(I) A licensee may earn 6 contact hours for 8 weeks of supervision provided to a student.~~

~~(II) A licensee may earn 9 contact hours for 12 weeks of supervision provided to a student.~~

~~(III) Licensees may divide fieldwork supervision hours based on the supervision provided.~~

~~(iii) Documentation shall include verification provided by the school to the fieldwork educator(s) with the name of the student, level of fieldwork, school, and dates or hours of fieldwork or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.~~

(C) Student Project Supervision.

~~(i) A licensee may earn .025 contact hours for each hour of supervision provided to a student completing a supervised project for the accredited educational program.~~

~~(ii) Documentation shall include the following:~~

~~(I) verification provided by the school to the supervisor with the name of the student, school and academic program, and dates of the semester for which the project was completed; and~~

~~(II) an attestation signed by the licensee and the student or school attesting to the dates and hours of supervision and the activities completed.~~

(D) Supervision of a Re-Entry Student.

~~(i) A licensee may earn CE for the supervision of a student completing a re-entry course through an accredited college or university.~~

~~(ii) A licensee may earn 3 contact hours for 4 weeks of supervision.~~

~~(iii) A licensee may earn 6 contact hours for 8 weeks of supervision.~~

~~(iv) Licensees may divide fieldwork supervision hours based on the supervision provided.~~

~~(v) Documentation shall include verification provided by the school to the supervisor(s) with the name of the student, school and re-entry program, and dates of the supervision rotation or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.~~

(6) Mentorship.

(A) Participation as a mentor or mentee for the purpose of the development of occupational therapy skills by a mentee under the guidance of a mentor skilled in a particular occupational therapy area. Both the mentor and mentee must hold a regular OT or OTA license in a state or territory of the U.S.

(B) Documentation shall include a signed mentorship agreement between a mentor and mentee that outlines specific goals and objectives and designates the plan of activities that are to be met by the mentee; the names of both mentor and mentee and their license numbers and issuing states; an activity log that corresponds to the mentorship agreement and lists dates and hours spent on each objective-based activity; a final evaluation of the outcomes of the mentorship agreement completed by the mentor; and a final evaluation of the outcomes of the mentorship agreement completed by the mentee.

(C) Participation as a Mentee: A licensee may earn one contact hour for each 3 hours spent in activities as a mentee directly related to the achievement of goals and objectives up to a maximum of 15 contact hours.

(D) Participation as Mentor: A licensee may earn one contact hour for each 5 hours spent in activities as a mentor up to a maximum of 10 contact hours.

(7) Participation in volunteer activities related to occupational therapy, including service on a committee, board, or commission of a state occupational therapy association, AOTA, or NBCOT, for the purpose of tangible, published outcomes, not for proprietary use, such as official documents, publications, and official reports. Documentation shall include an attestation by the licensee of the activities, including the date and duration of each, in addition to a copy of the actual publication or official document/report that reflects the licensee's name or verification from the entity attesting to the individual's contribution. Up to a maximum [; Maximum] of 10 contact hours.

(8) NBCOT Navigator® Activities. Licensees may earn CE for the completion of NBCOT Navigator activities. For such activities, 1 NBCOT CAU is the equivalent of 1 contact hour. No [; ñ] maximum. Documentation is a certificate of completion or letter of verification. Self-reflections and self-assessments, reading list and research portal activities, professional development plans, or similar activities are not eligible for CE credit.

(9) AOTA Benchmark. Licensees may earn CE for the completion of the AOTA Benchmark. Documentation is a certificate of completion or letter of verification indicating credit awarded. No maximum.

(10) Independent Study. Licensees may earn up to a maximum of 10 contact hours for the completion of the independent study of published materials. Documentation shall include a study plan outlining the specific goals and objectives of the study and an activity log corresponding to such with the dates and hours spent on each objective-based activity; the titles, publication dates, and media types (ex: journal article, book, video) of the materials; a synopsis of the materials and their implications for occupational therapy; and a final evaluation of the outcomes of the study.

(11) [(40)] Any deviation from the continuing education categories will be reviewed on a case by case basis by the Coordinator of Occupational Therapy or by the Continuing Education Committee. A request for special consideration must be submitted in writing a minimum of 60, though no more than 270, days prior to expiration of the license.

§367.3. Continuing Education Audit.

(a) The Board shall select for audit a random sample of licensees. The audit will cover a period for which the licensee has already completed the continuing education requirement.

(b) Licensees randomly selected for the audit must provide to TBOTE appropriate documentation within 30 days of notification.

(c) The licensee is solely responsible for keeping accurate documentation of all continuing education requirements. Continuing education documentation must be maintained for two years from the date of the last renewal for auditing purposes.

(d) Continuing education documentation includes, but is not limited to: transcripts [an official transcript], AOTA self-study completion certificates, copies of official sign-in or attendance sheets, course certificates of attendance, certificates of completion, and letters of verification.

(e) Documentation must identify the licensee by name, and must include the date and title of the course;[;] the name and signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included;[;] and the number of hours or contact hours awarded for the course. When continuing education units (CEUs), professional development units (PDU), or other units or credits are listed on the documentation, such must be accompanied by documentation from the continuing education provider noting the equivalence of the units or credits in terms of hours or contact hours.

(f) Knowingly providing false information or failure to respond during the audit process or the renewal process is grounds for disciplinary action.

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

Filed with the Office of the Secretary of State on November 18, 2021.

TRD-202104647

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 305-6900



## CHAPTER 370. LICENSE RENEWAL

### 40 TAC §370.4

The Texas Board of Occupational Therapy Examiners proposes new rule 40 Texas Administrative Code §370.4, concerning Administrative Suspension and Refusal to Renew a License. The new rule is proposed to add to the Board rules language regarding the delegation of Board authority to certain staff to administratively suspend or refuse to renew a license pursuant to Texas Occupations Code §454.255.

The Occupational Therapy Practice Act, Texas Occupations Code §454.255(a), Criminal History Record information for License Renewal, provides that "An applicant renewing a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 454.217." Section 454.255(b) further specifies that "The board may administratively suspend or refuse to renew the license of a



person who does not comply with the requirement of Subsection (a)."

Proposed rule §370.4 will specify that the Executive Director, the Executive Director's designee, or the Director of Enforcement may administratively suspend or refuse to renew the license of a person who does not comply with the requirements of the Occupational Therapy Practice Act §454.217 (relating to Criminal History Record Information for License Issuance) and §454.255 (relating to Criminal History Record Information Requirement for License Renewal).

#### FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed new rule is in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering the new rule as proposed under Texas Government Code §2001.024(a)(4) because the new rule does not impose a cost on state or local governments.

#### LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed new rule would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

#### PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed new rule would be in effect, the public benefit will be the clarification of information regarding administrative suspensions and refusal to renew a license pursuant to Texas Occupations Code §454.255. There would not be an additional anticipated economic cost to persons required to comply with the proposed new rule because the Occupational Therapy Practice Act already allows for the Board to administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Texas Occupations Code §454.255.

#### ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

#### TAKINGS IMPACT ASSESSMENT

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rule would be in effect:

- (1) the rule will not create or eliminate a government program;
- (2) the rule will not require the creation of new employee positions or the elimination of existing employee positions;

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

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

(5) the rule will not create a new regulation as the Occupational Therapy Practice Act already authorizes the Board to administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Texas Occupations Code §454.255, though this will create a new rule that addresses administrative suspensions and refusal to renew a license;

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

(7) the rule will not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the rule will neither positively nor adversely affect this state's economy.

#### COSTS TO REGULATED PERSONS

The agency determined that the rule does not impose a cost on regulated persons who practice in compliance with the Board's statute and rules, and the rule does not impose a cost on another state agency, a special district, or a local government. To the extent the rule imposes a cost on regulated persons concerning an administrative suspension or refusal to renew a license, the administrative suspension or refusal to renew the license is necessary to support the Board in preventing the practice of occupational therapy in a manner detrimental to the public health and welfare. This rule is not subject to Texas Government Code §2001.0045 because the rule is necessary to protect the health, safety, and welfare of the residents of this state and is necessary to implement legislation as SB 317 of the 85th Regular Legislative Session requires that an applicant renewing a license issued under Chapter 454 shall submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by §454.217.

#### ENVIRONMENTAL IMPACT STATEMENT

The agency has determined that the proposed new rule does not require an environmental impact analysis because the new rule is not a major environmental rule under Texas Government Code §2001.0225.

#### PUBLIC COMMENT

Comments on the proposed new rule may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to [lea@ptot.texas.gov](mailto:lea@ptot.texas.gov) within 30 days following the publication of this notice in the *Texas Register*. It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

#### STATUTORY AUTHORITY

The new rule is proposed under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties in administering Chapter 454. The rule is also proposed under Texas Occupations Code §454.105, Employees; Division of Responsibilities, which authorizes the Board to develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the director and staff of the executive council.

## CROSS REFERENCE TO STATUTE

The new rule implements Texas Occupations Code §454.255, Criminal History Record information for License Renewal, which allows the board to administratively suspend or refuse to renew the license of a person who does not comply with the requirement of subsection (a) of the section.

### §370.4. Administrative Suspension and Refusal to Renew a License.

The Executive Director, the Executive Director's designee, or the Director of Enforcement may administratively suspend or refuse to renew the license of a person who does not comply with the requirements of the Occupational Therapy Practice Act §454.217 (relating to Criminal History Record Information for License Issuance) and §454.255 (relating to Criminal History Record Information Requirement for License Renewal).

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 18, 2021.

TRD-202104646

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 305-6900



## PART 15. TEXAS VETERANS COMMISSION

### CHAPTER 462. ENERGY INDUSTRY PROGRAM FOR VETERAN PROFESSIONAL DEVELOPMENT

#### 40 TAC §§462.1 - 462.4

The Texas Veterans Commission (Commission) proposes new Chapter 462, §§462.1 - 462.4, concerning the Energy Industry Program for Veteran Professional Development, located in Title 40, Part 15, of the Texas Administrative Code.

#### PART I. PURPOSE AND BACKGROUND

The proposed new chapter is directed by Senate Bill (H.B.) 33, 87th Legislature, Regular Session (2021), which authorizes the Commission to assist veterans seeking training in preparation for employment in the energy industry.

#### PART II. EXPLANATION OF SECTIONS

##### §462.1. Authority and Purpose.

This section provides an explanation of the Commission's authority and purpose under Texas Government Code §434.027.

##### §464.2. Definition.

This section presents the definitions of the words and terms when used in this chapter unless the context clearly indicates otherwise.

##### §462.3. Process.

This section outlines the process for the Commission to assist veterans by providing information on federal and state resources that are available to assist them in obtaining training and employment in the State's energy industry.

#### §462.4. Outreach Campaign for Energy Industry Program for Veterans Professional Development.

This section outlines instructions for the Commission in coordination with the General Land Office (GLO) and Veterans' Land Board (VLB) to conduct an outreach campaign to encourage veterans to participate in the program.

### PART III. IMPACT STATEMENTS

#### FISCAL NOTE

Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

#### COSTS TO REGULATED PERSONS

Ms. Nall has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

#### LOCAL EMPLOYMENT IMPACT

Jim Martin, Outgoing Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

#### SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Anna Baker, Manager, Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

#### PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of administering the amended rule will increase participation within each of the agency's three remaining advisory committees.

#### GOVERNMENT GROWTH IMPACT STATEMENTS

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendment is in effect, the following statements will apply:

- (1) The proposed rule amendment will not create or eliminate a government program.
- (2) Implementation of the proposed rule amendment will not require creation of new employee positions, or elimination of existing employee positions.
- (3) Implementation of the proposed rule amendment will not require an increase or decrease in future legislative appropriations to the agency.
- (4) No fees will be created by the proposed rule amendment.

(5) The proposed rule amendment will not require new regulations.

(6) The proposed rule amendment has no effect on existing regulations.

(7) The proposed rule amendment has no effect on the number of individuals subject to the rule's applicability.

(8) The proposed rule amendment has no effect on this state's economy.

#### PART IV. COMMENTS

Comments on the proposed new rules may be submitted to Attention: General Counsel, Texas Veterans Commission, P.O. Box 12277, Austin, Texas 78711 or by fax to (512) 475-2395. Comments may also be submitted electronically to rulemaking@tvc.texas.gov.

For comments submitted electronically, please include "Energy Industry Program for Veteran Professional Development" in the subject line. The deadline for submission of comments is twenty days from the date of publication of the proposed new section in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration.

#### PART V. STATUTORY AUTHORITY

The new chapter is proposed under Texas Government Code 434.010, granting the commission the authority to establish rules; and at the directive of Senate Bill (H.B.) 33, 87th Legislature, Regular Session (2021).

No other statutes, articles, or codes are affected by this proposal.

##### §462.1. Authority and Purpose.

(a) Authority. The authority for this subchapter is provided in Texas Government Code §434.027.

(b) Purpose. The purpose of the Energy Industry Program for Veteran Professional Development is to provide assistance to veterans seeking training to prepare for employment in the energy industry.

##### §464.2. Definitions.

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

- (1) Veteran--as stated in 38 CFR § 3.1(d).
- (2) Commission--Texas Veterans Commission.
- (3) V.E.S.--Veterans Employment Services.
- (4) A.J.C.--American Job Centers.
- (5) Workforce Solutions--American Job Centers in Texas.

##### §462.3. Process.

(a) The Commission assists veterans by providing information on federal and state resources that are available to assist them in obtaining training or employment in the State's energy industry.

(b) To receive assistance from the Energy Industry Program for Veteran Professional Development through the Commission, a veteran must:

- (1) Visit the American Job Center/Workforce Solutions and enroll in the Work in Texas job matching system; and
- (2) provide documentation as required to staff for determination of assistance available to veterans.

##### §462.4. Outreach Campaign for Energy Industry Program for Veterans Professional Development.

(a) The Commission, in coordination with the General Land Office (GLO) and Veterans' Land Board (VLB), shall conduct an outreach campaign to encourage veterans to participate in the program by contacting their nearest American Job Center /Workforce Solutions for assistance.

(b) The coordination and responsibilities of the outreach campaign shall be added to the existing Memorandum of Understanding between the TVC, GLO and VLB.

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 17, 2021.

TRD-202104617

Houston John Goodell

General Counsel

Texas Veterans Commission

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 463-3288



## CHAPTER 463. VETERAN VERIFICATION LETTER

### 40 TAC §§463.1 - 463.4

The Texas Veterans Commission (Commission) proposes new Chapter 463, §§463.1-463.4, concerning the Veteran Verification Letter, located in Title 40, Part 15, of the Texas Administrative Code.

#### PART I. PURPOSE AND BACKGROUND

The proposed new chapter is implemented at the direction of Senate Bill (S.B.) 938, 87th Legislature, Regular Session (2021), regarding Section 171.005 (b) of the Texas Tax Code, authorizing the commission to provide a person who meets the requirements of Subsection (a)(1) written verification of that status in a form required by the comptroller.

#### PART II. EXPLANATION OF SECTIONS

##### §463.1 Purpose.

This section outlines the purpose of this chapter and establishes the standard for the distribution of verification letters.

##### §463.2 Application.

This section outlines the person(s) eligible to obtain a verification of veteran status for the purpose of obtaining a fee waiver for new veteran-owned business as defined by section 1. Subchapter A, Chapter 12, Business Organizations Code Sec. 12.005

##### §463.3. Definitions.

This section presents the definitions of the words and terms when used in this chapter unless the context clearly indicates otherwise.

##### §463.4. Process.

This section explains the process and requirement of the individual submitting documents to the Commission in accordance with Section 171.0005(b) of the Texas Tax Code is an honorably discharged veteran of the United States military.

## PART III. IMPACT STATEMENTS

### FISCAL NOTE

Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined that for each year of the first five-year period that the new rules are in effect there will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the proposed new rules.

### SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Anna Baker, Manager, Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

### PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of administering the amended rule will increase participation within each of the agency's three remaining advisory committees.

### GOVERNMENT GROWTH IMPACT STATEMENTS

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendment is in effect, the following statements will apply:

- (1) The proposed rule amendment will not create or eliminate a government program.
- (2) Implementation of the proposed rule amendment will not require creation of new employee positions, or elimination of existing employee positions.
- (3) Implementation of the proposed rule amendment will not require an increase or decrease in future legislative appropriations to the agency.
- (4) No fees will be created by the proposed rule amendment.
- (5) The proposed rule amendment will not require new regulations.
- (6) The proposed rule amendment has no effect on existing regulations.
- (7) The proposed rule amendment has no effect on the number of individuals subject to the rule's applicability.
- (8) The proposed rule amendment has no effect on this state's economy.

### PART IV. COMMENTS

Comments on the proposed new rules may be submitted to Attention: General Counsel, Texas Veterans Commission, P.O. Box 12277, Austin, Texas 78711 or by fax to (512) 475-2395. Comments may also be submitted electronically to [rulemak@tvc.texas.gov](mailto:rulemak@tvc.texas.gov).

For comments submitted electronically, please include "Veteran Verification Letter" in the subject line. The deadline for submission of comments is twenty days from the date of publication of the proposed new section in the *Texas Register*. Comments

should be organized in a manner consistent with the organization of the rule under consideration.

### PART V.

#### STATUTORY AUTHORITY

The proposed new chapter is authorized under Texas Government Code 434.010, granting the Commission the authority to establish rules, and at the directive of Senate Bill (S.B.) 938, 87th Legislature, Regular Session (2021), regarding Section 171.005 (b) of the Texas Tax Code, whereas the Commission shall provide to a person who meets the requirements of Subsection (a)(1) written verification of that status in a form required by the comptroller. The comptroller shall adopt rules prescribing the form and content of the verification and the manner in which the verification may be provided to the comptroller.

No other statutes, articles, or codes are affected by this proposal.

#### §463.1 Purpose.

Explains the purpose of this chapter is to establish the standard for the distribution of veteran verification letters, which verifies that an individual has served in and honorably discharged from a branch of the United States armed forces.

#### §463.2 Application.

The application applies to all veterans that wish to receive a verification of veteran status for the purpose of obtaining a fee waiver for a new veteran-owned business as defined by SECTION 1. Subchapter A, Chapter 12, Business Organization Code Sec. 12.005.

#### §463.3 Definitions.

Provides definitions for the following words and terms, when used in this chapter, that shall have the following meanings, unless the context clearly indicates otherwise: Veteran--Served in and was honorably discharged from a branch of the United States armed forces.

#### §463.4. Process.

(a) This process serves to verify that the individual submitting documents to the Commission in accordance with Section 171.0005(b) of the Texas Tax Code is an Honorably Discharged Veteran of the United States military.

(b) To initiate the process, each veteran owner must:

(1) Submit a web-form on the Texas Veterans Commission (TVC) website under the Entrepreneur menu bar; and

(2) Select "Veteran Verification Letter" for the MAIN REASON FOR CONTACT in the dropdown menu.

(c) Within ten business days, the veteran owner will be contacted to provide proof of active military service.

(d) Acceptable documents displaying full name, dates of service, and character of service whereby character of service must be "Honorable" are as follows:

(1) DD 214 - Service 2 or Member 4 copy; or

(2) NGB-22; or

(3) NA Form 13038; or

(4) Department of the V.A. benefits letter.

(e) Additionally, legal documentation (e.g., marriage/divorce decree) of name change is required if the name provided is different from the document submitted to verify active military 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 17, 2021.

TRD-202104618

Houston John Goodell

General Counsel

Texas Veterans Commission

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 463-3288



## CHAPTER 464. CITIZENSHIP ASSISTANCE FOR VETERANS

### 40 TAC §§464.1 - 464.3

The Texas Veterans Commission (Commission) proposes a new Chapter 464, §§464.1 - 464.3, concerning the Citizenship Assistance for Veterans, located in Title 40, Part 15, of the Texas Administrative Code.

#### PART I. PURPOSE AND BACKGROUND

The new chapter is proposed at the directive of Senate Bill (S.B.) 886, 87th Legislature, Regular Session (2021), which the Commission shall evaluate the veteran's citizenship status in order to (1) educate and direct veterans in becoming United States citizens; and (2) facilitate the veteran's naturalization process.

#### PART II. EXPLANATION OF SECTIONS

##### §464.1. Authority and Purpose.

The section outlines the purpose of this chapter and establishes the authority of the Commission under Texas Government Code §434.0027 relating to citizenship assistance for veterans.

##### §464.2. Definitions.

This section presents the definition of words and terms used in this chapter unless the context clearly indicates otherwise.

##### §464.3. Process.

This section outlines the process for citizenship assistance for veterans and the steps required for the Commission to assist in providing the veteran with federal resources.

#### PART III. IMPACT STATEMENTS

##### FISCAL NOTE

Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

##### COSTS TO REGULATED PERSONS

Ms. Nall has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

##### LOCAL EMPLOYMENT IMPACT

Jim Martin, outgoing Interim Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

##### SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Anna Baker, Manager, Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

##### PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of administering the amended rule will increase participation within each of the agency's three remaining advisory committees.

##### GOVERNMENT GROWTH IMPACT STATEMENTS

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendment is in effect, the following statements will apply:

- (1) The proposed rule amendment will not create or eliminate a government program.
- (2) Implementation of the proposed rule amendment will not require creation of new employee positions, or elimination of existing employee positions.
- (3) Implementation of the proposed rule amendment will not require an increase or decrease in future legislative appropriations to the agency.
- (4) No fees will be created by the proposed rule amendment.
- (5) The proposed rule amendment will not require new regulations.
- (6) The proposed rule amendment has no effect on existing regulations.
- (7) The proposed rule amendment has no effect on the number of individuals subject to the rule's applicability.
- (8) The proposed rule amendment has no effect on this state's economy.

#### PART IV. COMMENTS

Comments on the proposed new rules may be submitted to Attention: General Counsel, Texas Veterans Commission, P.O. Box 12277, Austin, Texas 78711 or by fax to (512) 475-2395.

Comments may also be submitted electronically to [rulemaking@tvc.texas.gov](mailto:rulemaking@tvc.texas.gov).

For comments submitted electronically, please include "Citizenship Assistance for Veterans" in the subject line. The deadline for submission of comments is twenty days from the date of publication of the proposed new section in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration.

#### PART V. STATUTORY AUTHORITY

The new chapter is proposed under Texas Government Code 434.010, granting the commission the authority to establish rules and at the directive of Senate Bill (S.B.) 886, 87th Legislature, Regular Session (2021).

No other statutes, articles, or codes are affected by this proposal.

§464.1. Authority and Purpose.

(a) Authority. The authority for this subchapter is provided in Texas Government Code §434.0027, relating to citizenship assistance for veterans.

(b) Purpose. The purpose of citizenship assistance for veterans is to educate and direct veterans in becoming United States citizens; and to facilitate veterans' naturalization processes.

§464.2. Definitions.

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

(1) Veteran--A person who has been a member of the Army, Navy, Air Force, Marines, Space Force or Coast Guard of the United States.

(2) Commission--Texas Veterans Commission.

(3) USCIS--U.S. Citizenship and Immigration Services.

(4) INA--Immigration and Nationality Act.

§464.3. Process.

(a) To receive assistance from the Commission, a veteran must:

(1) request assistance from the Commission to obtain information on the citizenship process;

(2) provide required documentation to the USCIS to facilitate the citizenship process;

(3) follow through with requirements of the USCIS to complete the process for obtaining citizenship or naturalization; and

(4) agree to pay for any fees required by the USCIS to complete the process for obtaining citizenship or naturalization.

(b) The Commission assists veterans by providing information on federal resources that are available to assist them in the process. The Commission does not provide legal advice and does not file forms on behalf of veterans.

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 17, 2021.

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Houston John Goodell

General Counsel

Texas Veterans Commission

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For further information, please call: (512) 463-3288



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 2. GENERAL POLICIES AND PROCEDURES

##### SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

###### 13 TAC §2.12, §2.13

The Texas State Library and Archives Commission (commission) adopts amendments to 13 TAC §2.12, Sick Leave Pool, and new §2.13, State Employee Family Leave Pool, without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5335). The rules will not be republished.

The new rule implements House Bill (HB) 2063, 87th Leg., R.S. (2021), which created a state employee family leave pool under Government Code, Chapter 661, Subchapter A-1. The amendments update and align the commission's existing rule relating to the sick leave pool under Government Code, Chapter 661, Subchapter A, for consistency with the rule relating to the family leave pool.

**SUMMARY OF COMMENTS.** No comments were received on the proposed new rule or proposed amendments.

**STATUTORY AUTHORITY.** The amendments and new rule are adopted under Government Code, §661.022(c), as added by HB 2063, which requires state agencies to adopt rules relating to the operation of the agency family leave pool, and Government Code, §661.002(c), which requires state agencies to adopt rules relating to the operation of the agency sick leave pool.

**CROSS REFERENCE TO STATUTE.** 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 16, 2021.

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Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Effective date: December 6, 2021

Proposal publication date: August 27, 2021

For further information, please call: (512) 463-5591



#### CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

##### 13 TAC §8.1, §8.3

The Texas State Library and Archives Commission (Commission) adopts amendments to Chapter 8, TexShare Library Consortium, §8.1, Definitions, and §8.3, Consortium Membership and Affiliated Membership. The rules are adopted with non-substantive changes to the proposed text as published in the July 16, 2021, issue of the *Texas Register* (46 TexReg 4256). The changes correct capitalization and clarify references to other sections of the Texas Administrative Code. The rules will be republished.

**EXPLANATION OF ADOPTED AMENDMENTS.** The amendment to §8.1(1) implements House Bill (HB) 4202, 87th Leg., R.S., (2021). HB 4202 amended the definition of "institution of higher education" in Government Code, §441.221(2), to include a work college, as defined by 20 U.S.C. §1087-58. Accordingly, the amendment revises the definition of "institution of higher education" in the rule to include work colleges.

An amendment to §8.1(12) clarifies that to be eligible for consortium membership, a library must be physically located in Texas, or if physically located outside of Texas, capable of providing online library services exclusively to Texas residents.

The amendment to §8.3 makes a similar clarification for consortium membership—an institution of higher education or library of clinical medicine must be physically located in Texas, or, if physically located outside of Texas, capable of providing online services exclusively to Texas residents.

In addition, other amendments make grammar, citation, and spelling corrections.

**SUMMARY OF COMMENTS.** The commission did not receive any comments on the proposed amendments.

**STATUTORY AUTHORITY.** These amendments are adopted under Government Code, §441.224, which authorizes the commission to admit other types of libraries to the consortium as members or as affiliate members of the consortium by rule; and Government Code, §441.225, which authorizes the commission to adopt rules to govern the operation of the consortium.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441, Subchapter M.

§8.1. Definitions.

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

(1) Institution of higher education--A public junior college certified by the Texas Higher Education Coordinating Board as described by Education Code, §61.063; a general academic teaching institution as defined by Education Code, §61.003(3); a medical and dental unit as defined by Education Code, §61.003(5); a public technical institute as defined by Education Code, §61.003(7); a private or independent institution of higher education as defined by Education Code, §61.003(15); a public state college as defined by Education Code, §61.003(16); or a work college as defined by 20 U.S.C. §1087-58.

(2) TexShare Annual Report Survey--A report submitted to the commission each year by TexShare members and affiliate members. The report shall include questions concerning satisfaction with TexShare membership and programs. It may also be used to provide updates to institutional program participation contacts.

(3) Commission--The Texas State Library and Archives Commission.

(4) Consortium--The TexShare Library Consortium.

(5) Director and Librarian--Chief executive and administrative officer of the commission.

(6) Public Library has the meaning assigned by Government Code, §441.122.

(7) Library of clinical medicine has the meaning assigned to Non-Profit Corporation by Government Code, §441.221.

(A) Extensive library services are defined as:

(i) Library is open and staffed a minimum of 45 hours per week;

(ii) Staff includes a minimum of one full-time equivalent professional librarian (as defined in §1.84 of this title (relating to Professional Librarian));

(iii) Library employs a library director for at least 40 hours per week in library duties;

(iv) Services include circulation of materials, reference services, use of computers to access information sources, databases, or other similar services; and

(v) An institutionally-approved collection development policy updated at least every five years.

(B) Extensive collections in the fields of clinical medicine and the history of medicine is defined as follows:

(i) Clinical medicine is defined as materials in the "W" category of the National Library of Medicine (NLM) classification scheme ([www.nlm.nih.gov/clas/index.html](http://www.nlm.nih.gov/clas/index.html)).

(ii) History of medicine is defined as:

(I) Materials fitting the scope of the NLM classification scheme ([www.nlm.nih.gov/clas/index.html](http://www.nlm.nih.gov/clas/index.html)) under WZ-History of Medicine, Misc or in the NLM classification scheme under history of a particular medical subject (e.g. history of surgery (WO 11), history of dermatology (WR 11), history of gynecology (WP 11), etc.); or

(II) Unique archival materials (print materials, historical artifacts, and other resources) related to institutional history, or reflecting historically significant contributions of persons or institutions, or history of a particular area of health care.

(iii) "Extensive collections" is defined as a minimum of 12,000 library resources in the field of clinical medicine and history of medicine, in print and in electronic formats, comprised of books, journal titles, technical reports, videos, or databases.

(8) Public school district--Any school district or open enrollment charter school accredited by the Texas Education Agency under Texas Education Code, Section 11.001.

(9) Public school library--An organized collection of printed, audiovisual and/or computer resources in a public school or public school campus (elementary or secondary). A public school library makes resources and services available to all students, teachers, and administrators. Collections such as classroom "libraries" or collections of primarily textbooks or other similar classroom teaching materials are not public school libraries.

(10) Certified school librarian--A public school district staff member holding a current school librarian certificate issued by the State Board for Educator Certification under the authority of Education Code, Chapter 21, Subchapter B (§§21.031 - 21.058).

(11) Certified staff member--A public school district staff member holding a current certificate, license, permit, or other credential issued by the State Board for Educator Certification under the authority of Education Code, Chapter 21, Subchapter B (§§21.031 - 21.058).

(12) Consortium membership refers to membership held by those libraries meeting the eligibility criteria specified in §8.3(a)(1) of this chapter (relating to Consortium Membership and Affiliate Membership) and that are physically located in Texas or, if physically located outside of Texas, capable of providing online library services exclusively to Texas residents. Libraries meeting these requirements are referred to as "members" or "consortium members."

(13) Affiliate membership refers to membership held by public school districts and by eligible nonprofit libraries meeting the criteria specified in §8.3(a)(2) of this chapter. Libraries admitted under this section are referred to as "affiliate members."

(14) Eligible nonprofit library--A library not qualified for consortium membership by virtue of being a public library, library of clinical medicine, library component of an institution of higher education, or public school district that:

(A) Is physically located in Texas or, if physically located outside of Texas, capable of providing online library services exclusively to Texas residents;

(B) Is established as a nonprofit organization or administrative subdivision of a nonprofit organization:

(i) under the Texas Nonprofit Corporation Law (Texas Business Organizations Code §22.001 *et seq.*);

(ii) recognized as exempt from federal income tax under section 501(c)(3) of the U.S. Internal Revenue Code;

(iii) operated by a unit of local, state, or federal government; or

(iv) operated by a federally recognized American Indian tribe;

(C) Is a component of one of the following:



(i) An institution accredited by an accrediting agency recognized by the Texas Higher Education Coordinating Board as specified in 19 TAC §7.6 (relating to Recognition of Accrediting Agencies);

(ii) Other agency of higher education as defined by Education Code, §61.003 (6);

(iii) A full member of the National Network of Libraries of Medicine, South Central Region;

(iv) The National Archives and Records Administration;

(v) A U.S. Department of Defense installation;

(vi) A non-public school accredited by an agency recognized by the Texas Private School Accreditation Commission; or

(vii) A federally recognized American Indian tribe; and

(D) Provides library services, defined as:

(i) Provides services including circulation of materials, reference services, and use of computers to access information sources;

(ii) Is open and staffed a minimum of 20 hours per week; and

(iii) Employs a library director for at least 20 hours per week in library duties.

### §8.3. Consortium Membership and Affiliate Membership.

(a) Eligibility of individual institutions or libraries.

(1) Membership in the consortium is open to all institutions of higher education and libraries of clinical medicine that are physically located in Texas or, if physically located outside of Texas, capable of providing online library services exclusively to Texas residents, and to all public libraries that are members of the state library system.

(2) Affiliate membership is open to public school districts and to other eligible nonprofit libraries submitting an application for affiliate membership to the Director and Librarian.

(b) Agreement.

(1) Public libraries will be members of TexShare upon becoming members of the state library system.

(2) Institutions of higher education and libraries of clinical medicine must file membership agreements, signed by a duly authorized administrative official, on joining the consortium.

(3) Eligible nonprofit libraries whose applications for affiliate membership have been approved must file an affiliate membership agreement, signed by a duly authorized administrative official, specifying in which programs of the consortium they may participate and any limitations to participation that will apply.

(4) Public school districts and open enrollment charter schools accredited by the Texas Education Agency will be affiliate members of TexShare.

(5) Membership agreements must be approved by the Director and Librarian following review by the TexShare Advisory Board before an institution may identify itself as a member or affiliate member of TexShare.

(6) Participation in specific programs of the consortium may require additional agreements.

(c) Renewal of membership.

(1) Institutions of higher education, public libraries, libraries of clinical medicine, and eligible nonprofit libraries will have their memberships or affiliate memberships automatically renewed for each state fiscal year, provided that they continue to meet the definition required in subsection (a) of this section.

(2) Members may choose to submit updated membership agreements annually or as required by their respective administrations.

(d) Multiple Libraries.

(1) For institutions of higher education, the unit of membership in the TexShare Library Consortium shall be the institution. Institutions of higher education, as determined by the Texas Higher Education Coordinating Board, with libraries in multiple locations shall apply as a single unit. Community colleges shall apply per their certification by the Texas Higher Education Coordinating Board, in accordance with Education Code §61.063.

(2) Public libraries with branches shall be admitted as a single unit.

(3) For libraries of clinical medicine, the unit of membership shall be the non-profit corporation; those having multiple locations shall apply as a single unit. The various locations served by a non-profit corporation must be fully governed and owned by that non-profit corporation in order to qualify under the non-profit corporation's membership.

(4) For eligible nonprofit libraries, the unit of membership or affiliate membership shall be determined during the application process.

(e) Suspension and loss of membership.

(1) TexShare Annual Report Survey. Members and affiliate members shall be asked to file a current and complete TexShare annual report survey with the commission by December 15 of each year. Following review by the TexShare Advisory Board, the Director and Librarian may suspend or revoke any institution's membership following two or more failures to submit TexShare annual report surveys. Institutions may re-join TexShare at any time provided that they continue to meet the definition in subsection (a) of this section and upon submission of a written membership or affiliate membership agreement as described in subsection (b) of this section.

(2) Institutions of higher education, libraries of clinical medicine, nonprofit libraries, and public libraries that no longer meet the definition in subsection (a) of this section, or are otherwise not qualified, will have their TexShare membership or affiliate membership revoked. Institutions may re-join TexShare at any time provided that they meet the definition in subsection (a) of this section and upon submission of a written membership or affiliate membership agreement as described in subsection (b) of this section.

(3) Upon written request of the member institution, their TexShare membership may be suspended or revoked. Institutions may re-join TexShare at any time provided that they continue to meet the definition in subsection (a) of this section and upon submission of a written membership or affiliate membership agreement as described in subsection (b) of this section.

(f) Members, affiliate members, and public school districts may receive services or be assessed fees based on demographic, financial, or other information, as reflected in the latest statistics from the National Center for Educational Statistics, the Texas Higher Education Coordinating Board, the Independent Colleges and Universities of Texas, the Texas Education Agency, the Texas Public Library Annual Report, or from statistical information received directly from the

member, affiliate member, or public school library and certified by the member, affiliate member, or public school library as accurate.

(g) Fees. Some consortium services are supported by fees paid by participants. Fees will be set by the Director and Librarian for different categories of consortium services, in consideration of the costs involved in providing these services to member libraries, affiliate members, and public school libraries.

(h) Complaints regarding fee assessments, denial of membership, or denial of affiliate membership will be processed in accordance with procedures outlined in §2.55 of this title (relating to Protest Procedure).

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 16, 2021.

TRD-202104601

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Effective date: December 6, 2021

Proposal publication date: July 16, 2021

For further information, please call: (512) 463-5591



## TITLE 16. ECONOMIC REGULATION

### PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

#### CHAPTER 33. LICENSING

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts amendments to §§33.5, 33.72 and 33.78 and new rules §33.1 and §33.80 with one change to §33.5 and §33.72 to correct lettering errors. The remaining new and amended rules are adopted without change as published in the October 8, 2021, *Texas Register* (46 TexReg 6626) and will not be republished. Sections 33.5 and 33.72 will be republished.

The new and amended rules are necessary to conform to recent legislation (S.B. 911, 87th Leg., R.S. 2021); to clarify and narrow the applicability of certain rules related to events at temporary locations based upon stakeholder feedback; and to place standards for timely filings at the beginning of Chapter 33, Licensing, adding filing through the new Alcohol Industry Management System (AIMS) as a filing method.

Amended §33.5 becomes effective on Jan. 1, 2022, concurrent with the effective date of the associated statutory amendments. All other new and amended rules become effective according to the default timeline in Ch. 2001 of the Government Code.

#### Response to Comments

Comment 1: Joyce Foster and Keith Foster of San Ducerro Winery expressed concerns that the rules will hurt small ("mom and pop") wineries that routinely sell their products at farmer's markets. Joyce Foster requested that wineries selling their products at farmer's markets be able to use the File and Use Notification rather than applying for prior authorization, noting that the File

and Use Notification process is more akin to the process used by such entities under the prior license and permit regime and that it allows for events just a few days out. Keith Foster commented that the ten-event annual limitation on temporary events is problematic for wineries that sometimes attend farmer's markets up to forty or more weekends a year at the same location.

Response 1: Both of the cited provisions were adopted in December of 2020 following a full rulemaking process under the Administrative Procedure Act, Texas Government Code Chapter 2001 (see 45 TexReg 8779) and went into effect on September 1, 2021. In the current rulemaking process, the agency proposes to reduce the number of stakeholders potentially impacted by the ten-event annual limitation as originally adopted, which will remove the impact on most wineries selling at farmer's markets. The provisions regarding what types of events are exempt from obtaining prior approval are not proposed to be amended. The change requested by the commenter would require a legislative action to amend the underlying statute.

The requirement that a winery obtain prior authorization to sell its products at an event at a temporary location was enacted by the Texas Legislature as part of the consolidation of license and permit types resulting from Sunset legislation (H.B. 1545, 86th Leg., R.S. 2019). That bill did away with the winery festival permit, which was used for these events prior to the change. It created three new authorizations for events at temporary locations. Under the new statutory authorization regime, wineries must obtain prior authorization to sell their products at farmer's markets and similar events. The TABC cannot waive this statutory requirement through its rules.

After adopting an annual limitation of ten on events at a single temporary location during its 2020 rulemaking process, the agency received feedback from stakeholders that the provision was overbroad and would impact some businesses that were not intended to be subject to the limitation. As a result, this rulemaking amends the ten-event limitation to specify that it applies to a license or permit holder who has an ownership interest or leases the temporary location, among other things. Because wineries generally do not own or lease the location of the farmer's markets, as revised by this rulemaking, the limitation does not apply to the commenters' situation.

#### SUBCHAPTER A. APPLICATIONS

##### 16 TAC §33.1

The new and amended rules are adopted pursuant to Alcoholic Beverage Code §§16.12(c), 25.15(c), 28.19(c), 30.08, 32.25(d), and 69.18(c), as amended effective September 1, 2021; and under §5.31 of the Code, which allows the commission to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted new and amended rules do not impact any other current rules or statutes.

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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## 16 TAC §33.5

The new and amended rules are adopted pursuant to Alcoholic Beverage Code §§16.12(c), 25.15(c), 28.19(c), 30.08, 32.25(d), and 69.18(c), as amended effective September 1, 2021; and under §5.31 of the Code, which allows the commission to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted new and amended rules do not impact any other current rules or statutes.

### §33.5. *Food and Beverage Certificate.*

(a) This rule relates to §§25.13, 28.18, 32.23 and 69.16 of the Texas Alcoholic Beverage Code.

(b) The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise:

(1) *Entrée*--course of a meal that may include an appetizer, small plate, main dish, dessert or other similar food item.

(2) *Food service*--the cooking, preparing, or assembling of food on the location available for consumption at the location. Commercially pre-packaged items purchased off of the location which require no cooking or assembly do not constitute food service under this section.

(3) *Food service facilities*--a designated permanent portion of the licensed location where food is stored and prepared for consumption at the location.

(4) *Location*--the designated physical address of a premises, but also including all areas at that address where the license or permit holder may sell, serve or deliver alcoholic beverages for immediate consumption at the address, regardless of whether some of those areas are occupied by other businesses, as long as those businesses are contiguous.

(5) *Premises*--the designated area at a location that is licensed by the commission for the sale, service, or delivery of alcoholic beverages.

(6) *Restaurant*--a business that:

(A) operates its own permanent food service facility with commercial cooking equipment on its premises; and

(B) prepares and offers to sell multiple entrees for consumption on or off the premises.

(c) An applicant is qualified for a food and beverage certificate if the following conditions, in addition to other requirements, are satisfied:

- (1) multiple entrees are available to customers; and
- (2) permanent food service facilities are maintained at the location; and
- (3) either:

(A) the receipts from the sale of alcoholic beverages by the license or permit holder at the location are 60 percent or less of the total receipts from the location; or

(B) the facility meets the definition of Restaurant under subsection (b)(6) of this section.

(d) The hours of operation for sale and service of food and of alcoholic beverages are the same except that food may be sold or served before or after the legal hours for sale of alcoholic beverages.

(e) If the applicant is a hotel that maintains separate area restaurants, lounges or bars, food service facilities must exist for each of the designated licensed premises.

(f) An applicant for an original food and beverage certificate shall furnish the following, as well as any other information requested by the commission to ensure compliance:

(1) the menu or, if no menu is available, a listing of the food and beverage items;

(2) hours of operation of food service and hours of operation for sale or service of alcoholic beverages;

(3) if qualifying under subsection (c)(3)(A) of this section, sales data (including complimentary drinks, as recorded pursuant to subsection (k)(3) of this section) or, if not available, a projection of sales. The sales data or projection of sales should include sufficient breakdown of revenues of food, alcoholic beverages, and all other sales categories at the location (e.g., tickets, merchandise, retail goods);

(4) if qualifying under subsection (c)(3)(B) of this section, a list of commercial cooking equipment used in food service; and

(5) copies of floor plans of the location indicating the licensed premises and permanent areas devoted primarily to food service.

(g) Applicants for renewal of food and beverage certificates shall submit sales data described in subsection (k) of this section. The commission may request additional information or documentation to indicate that the licensed location has permanent food service facilities for the preparation and service of multiple entrees.

(h) The commission may review the operation at the location to determine that food service with food service facilities for the preparation and service of multiple entrees is maintained. In doing so the commission may review such items as required in the original or renewal application as well as advertising, promotional items, changes in operations or hours, changes in floor plans, prominence of food items on the menu as compared to alcoholic beverages, name of the business at the location, number of transactions with food components, copies of city or county permits or certificates relating to the type of business operation, and any other item deemed necessary or applicable.

(i) Failure to provide documentation requested or accurately maintain required records is prima facie evidence of non-compliance.

(j) In verifying that food service is being maintained at the location, the commission may examine all books, papers, records, documents, supplies and equipment of the certificate holder.

(k) The following recordkeeping requirements apply to certificate holders:

(1) records must be maintained to reflect separate totals for alcoholic beverage sales or service, food sales, and all other sales categories at the location that, when combined, make up the location's total sales;

(2) purchase invoices must be maintained to reflect the total purchases of alcoholic beverages, food and all other purchase categories at the location;

(3) complimentary alcoholic beverages must be recorded and included in the total alcoholic beverage sales as if they were sold and clearly marked as being complimentary; and

(4) all records must be maintained for four years and made available to authorized representatives of the commission upon request.

(l) In considering alcoholic beverage sales, the dollar value of complimentary drinks shall be added to total sales or service of alcoholic beverages in determining the percentage of alcoholic beverage sales or service from the licensed premises.

(m) In determining the permanent food service facilities requirement for businesses qualifying under subsection (c)(3)(A) of this section, the gross receipts of all business entities sharing the location will be considered. For audit purposes, it shall be the responsibility of the food and beverage certificate holder to provide financial and accounting records related to food, alcohol, and other major sales categories of all business entities sharing the location. For audit purposes, if such information that is provided is deemed insufficient to determine if a license or permit holder qualifies for issuance of a food and beverage certificate at the location, the computation and determination of the percentage of alcohol sales or service fees to total gross receipts at the licensed location may be based upon any available records of information.

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## SUBCHAPTER E. EVENTS AT A TEMPORARY LOCATION

### 16 TAC §§33.72, 33.78, 33.80

The new and amended rules are adopted pursuant to Alcoholic Beverage Code §§16.12(c), 25.15(c), 28.19(c), 30.08, 32.25(d), and 69.18(c), as amended effective September 1, 2021; and under §5.31 of the Code, which allows the commission to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted new and amended rules do not impact any other current rules or statutes.

§33.72. *Term of Authorization; Annual Limitation on Authorizations.*

(a) Temporary Event Approvals and File and Use Notifications shall be effective for no more than four consecutive days.

(b) A person or entity may use a Temporary Event Approval or File and Use Notification at the same location for no more than ten

events in a calendar year if the person or entity that will hold the authorization has an ownership interest in the real property or a portion of it or has a lease for its use of the location. For purposes of this rule, a lease is defined as a contractual agreement by which one party conveys an estate in property to another party, for a limited period, subject to conditions, in exchange for something of value, but retains ownership. The ten-event limitation does not apply to a location that meets the definition of a Public Entertainment Facility in Alcoholic Beverage Code §108.73, regardless of whether it holds that designation.

(c) A Nonprofit Entity Temporary Event Permit shall be effective for no more than ten consecutive days unless the executive director or the executive director's designated representative, on the basis of a case-by-case review of the specific situation, grants additional time.

(d) Upon written request, the executive director or the executive director's designated representative may make an exception to the limitations of subsections (a) through (c) of this section on a case-by-case basis. An exception request will be granted or denied in writing.

(e) Authorization for an event under this subchapter automatically terminates upon issuance of a two-year license or permit for the event location, regardless of the term of the temporary event authorization.

(f) The effective dates of an event authorization under this subchapter must cover the period in which alcoholic beverages will be delivered or stored in addition to the event itself.

(g) A temporary permit or license expires on the date indicated on the license or permit or on the same date as the primary permit, whichever occurs earlier.

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## SUBCHAPTER D. APPLICATION REVIEW AND PROTESTS

### 16 TAC §33.52

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts the repeal of 16 TAC §33.52, concerning Computation of Time. The repeal is adopted as proposed in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6630). The repealed rule will not be republished.

The agency is adopting amended and new rules in Chapter 33 that necessitate moving §33.52 simultaneously with this repeal. In a separate rulemaking, the content of §33.52 is incorporated into new §33.1, concerning General Provisions.

No formal public comments were received regarding this repeal.

This repeal is adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

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## CHAPTER 35. ENFORCEMENT

### SUBCHAPTER A. TRANSPORTATION OF LIQUOR

#### 16 TAC §§35.1 - 35.3, 35.5, 35.6

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts the repeal of 16 TAC §§35.1 - 35.3, 35.5, and 35.6, in Subchapter A, concerning Transportation of Liquor. The repeal is adopted as proposed in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6631). The repealed rules will not be republished.

The commission identified these five rules in Chapter 35, Enforcement, as more appropriately included in Chapter 41, Auditing, due to their content. Moving the rules to a more logical chapter will assist users of the rules in locating rules that apply to their circumstances. Simultaneously with these repeals, the content of these rules is incorporated into Chapter 41 in a separate rulemaking.

No formal public comments were received regarding these repeals.

These repeals are adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 41. AUDITING

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts the repeal of 16 Texas Administrative Code §§41.1 - 41.3, 41.11, 41.18 - 41.23, 41.25, 41.27, 41.28, 41.30 - 41.32, 41.35, 41.38, 41.39, 41.41 - 41.46, 41.49, 41.51 - 41.57, 41.61, and 41.71 without changes as proposed in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6632). The repeals will not be published. This list includes all rules in Chapter 41 except for §41.48, which is not repealed at this time.

The repeals are part of a comprehensive reorganization and streamlining of Chapter 41, Auditing. In a separate simultaneous rulemaking, the agency adopts new rules in Chapter 41 to reflect changes made by H.B. 1545, 86th Tex. Leg. R.S. (2019) and to improve the chapter overall.

No formal public comments were received regarding the repeals.

### SUBCHAPTER A. SALES

#### 16 TAC §§41.1 - 41.3

The repeals are adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted repeals do not impact any other current rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### SUBCHAPTER B. EXPORTS OF LIQUOR

#### 16 TAC §§41.11, 41.18, 41.19

The repeals are adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted repeals do not impact any other current rules or statutes.

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## SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

### 16 TAC §§41.20 - 41.23, 41.25, 41.27, 41.28, 41.30 - 41.32, 41.35, 41.38, 41.39, 41.41 - 41.46, 41.49, 41.51 - 41.57

The repeals are adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted repeals do not impact any other current rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. SACRAMENTAL WINE

### 16 TAC §41.61

The repeals are adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted repeals do not impact any other current rules or statutes.

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## SUBCHAPTER E. IDENTIFICATION STAMPS

### 16 TAC §41.71

The repeals are adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted repeals do not impact any other current rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 41. AUDITING

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts new Chapter 41, concerning Auditing, §§41.1 - 41.6; 41.11 - 41.26; 41.30 - 41.40; 41.41 - 41.43; 41.50 - 41.56; and 41.60, with changes to §41.21 (consolidation of duplicative provisions) and §41.35 (deletion of duplicative provisions); non-substantive corrections in §41.37 and §41.39; and a clarifying change to the titles of §41.35 and §41.40. These rules will be republished. The remaining new and amended rules are adopted without change to the rules as published in the October 8, 2021, *Texas Register* (46 TexReg 6634) and will not be republished.

Due to extensive rearrangement of the chapter, only one rule retained its original rule number (§41.48). All but one of the rules comprising current Chapter 41 are repealed in a separate, simultaneous rulemaking.

The new rules result from a comprehensive review of Chapter 41 pursuant to the regular four-year review cycle prescribed by Government Code §2001.039; conform to statutory changes made by House Bill 1545 (86th Tex. Leg. R.S. (2019)); and add a definition of "tamper-proof container" as authorized by statutory changes made by House Bill 1024 (87th Tex. Leg. R.S. (2021)).

No formal public comments were received regarding the rules as proposed.

## SUBCHAPTER A. GENERAL PROVISIONS

### 16 TAC §§41.1 - 41.6

The rules are adopted pursuant to Section 410 of H.B. 1545 (2019); §§28.1001(a)(2)(C) and 32.155(a)(2) of the Alcoholic Beverage Code (the "Code"); and the commission's general powers and duties under §5.31 of the Code.

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## SUBCHAPTER B. RECORDKEEPING & REPORTS

### 16 TAC §§41.11 - 41.26

New §§41.11 - 41.26 are adopted pursuant to the commission's authority under §5.31 of the Code, which allows the commission to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted new rules require the repeal of current rules §§41.11, 41.18 - 41.23, and 41.25.

#### §41.21. *Record Requirements: Export.*

No person shall export any alcoholic beverages in any manner except in compliance with the following:

(1) Permittees authorized to export alcoholic beverages shall maintain copies of billing invoices and shipping documents to support any export out of the State of Texas. Supporting documentation shall include an order signed by the purchaser of alcoholic beverages or, in case of return to a distillery, brewery, or winery, a letter of authority.

(2) The alcoholic beverages may then be delivered to a common carrier holding a carrier's permit, or if the permittee is authorized under its permit to transport alcoholic beverages in vehicles owned or leased by the permittee, such alcoholic beverages may be transported and exported in vehicles registered with the commission by the permittee.

(3) A license or permit holder exporting under this section must obtain proper proof from the purchaser that the alcoholic beverages were sold or disposed of outside of this state and keep such records on file for inspection or audit by any representative of the commission for at least two years.

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## SUBCHAPTER C. EXCISE TAXES

### 16 TAC §§41.30 - 41.40

New §§41.30 - 41.40 are adopted pursuant to the commission's authority under §5.31 of the Code, which allows the commission to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted new rules require the repeal of current rules §§41.30 - 41.32, 41.35, 41.38, and 41.39.

#### §41.35. *Reporting Required for Export of Alcoholic Beverages.*

License and permit holders authorized to export alcoholic beverages must list those transactions as tax-exempt out-of-state exports on monthly excise tax reports.

#### §41.37. *Destructions.*

(a) Each permittee subject to the provisions of Alcoholic Beverage Code §§201.03, 201.04, or 201.42, and each licensee subject to the provisions of Alcoholic Beverage Code §203.01, is entitled to receive a tax exemption or a tax credit for alcoholic beverages destroyed in accordance with subsections (c) - (g) of this section.

(b) Each permittee or licensee eligible to destroy alcoholic beverages following a natural disaster pursuant to Alcoholic Beverage Code §109.09, is entitled to receive a tax exemption or a tax credit for alcoholic beverages destroyed in accordance with subsection (i) of this section.

(c) To be claimed as a destruction for purposes of receiving a tax exemption or a tax credit, the alcoholic beverages must be destroyed in such a manner that the product is rendered unrecoverable or unfit for human consumption.

(d) A permittee or licensee must comply with the following requirements prior to the destruction of alcoholic beverages for which a tax exemption or tax credit is claimed, unless it submits to the commission a written request for an exception and receives approval of the request prior to destruction:

(1) At least three full working days prior to the destruction, the permittee or licensee must notify the nearest authorized representative of the commission of the intent to destroy the alcoholic beverages. This notification must be made in writing on the commission's Application for Destruction of Alcoholic Beverages and contain a complete listing by brand, quantity, container size, and package size of the alcoholic beverages to be destroyed. This requirement for a complete listing may be satisfied by attaching a computerized listing that provides all the required documentation to the Application for Destruction of Alcoholic Beverages.

(2) The permittee or licensee must receive written approval from an authorized representative of the commission to conduct the destruction.

(c) To support a claim for a tax exemption or tax credit for a destruction, the permittee or licensee must retain the following documentation and make it available to an authorized representative of the commission upon request:

(1) a signed copy of the Application for Destruction of Alcoholic Beverages indicating that it was approved, which an authorized representative of the commission shall provide to the permittee or licensee when the destruction is approved;

(2) if the alcoholic beverages were destroyed at a location that charges a fee for this service, a copy of the receipt for payment of the fee; and

(3) an affidavit of destruction executed by an employee of the permittee or licensee who witnessed the destruction of the alcoholic beverages. The affidavit must include the date of destruction, the

destruction location, and a description of how the alcoholic beverages were destroyed. A separate affidavit must be prepared for distilled spirits, wine, and malt beverages.

(f) The license or permit holder shall submit the approved Application for Destruction of Alcoholic Beverages (including any attachments) with the monthly excise tax report it files with the commission upon which it claims the tax exemption for the destroyed alcoholic beverages. If the permittee or licensee is unable to claim the destroyed alcoholic beverages as an exemption on a tax report, it may submit a letter to the commission requesting issuance of an authorized tax credit.

(g) The license or permit holder shall maintain a copy of the approved Application for Destruction of Alcoholic Beverages (including any attachments) and make it available upon request for inspection by an authorized representative of the commission.

(h) The commission may require that the alcoholic beverages designated for destruction be physically inspected and inventoried by a representative of the commission prior to the scheduled destruction and/or that the actual destruction be witnessed by an authorized representative of the commission.

(i) A permit or license holder may destroy uninsured malt beverages subject to destruction under Alcoholic Beverage Code §109.09 only in compliance with the following requirements:

(1) the alcoholic beverages must be destroyed in such a manner that the product is rendered unrecoverable;

(2) an employee of the permittee or licensee who witnessed the destruction of the malt beverages must execute an affidavit of destruction that includes the date of destruction, the destruction location, and a description of how the alcoholic beverages were destroyed;

(3) not later than 30 days following the destruction of malt beverages under this section, the permittee or licensee must submit to the commission the affidavit required under paragraph (2) of this subsection with a completed and signed commission form for notification of destruction of uninsured product after a natural disaster; and

(4) The permittee or licensee must retain the following documentation and make it available to the commission upon request:

(A) a copy of the receipt for the cost of destruction, if the malt beverages were destroyed at a location that charged a fee for the service;

(B) a copy of the completed and signed Notification of Destruction of Uninsured Product after a Natural Disaster; and

(C) a copy of all destruction affidavits executed by the person who witnessed the destruction.

#### §41.39. Amount of Excise Tax Bonds.

(a) Excise tax bonds required by Chapter 204 of the Alcoholic Beverage Code and by Chapter 33, Subchapter C, of this title to be maintained by license or permit holders authorized to import malt beverages or liquor into this state shall be in a minimum amount of \$1,000 and the maximum amounts of the bonds shall be determined by the executive director. The maximum bond fixed by the executive director must be an amount that will adequately protect the State of Texas against the anticipated tax liability of the principal during any six-week period.

(b) The executive director may investigate the adequacy of any bond and adjust the bond as they deem justified by the investigation results.

#### §41.40. Reports Required for Brewpubs.

(a) Each holder of a brewpub license shall make a monthly report to the commission on forms prescribed or approved by the executive director or executive director's designee.

(b) The report shall be electronically submitted or, if mailed, postmarked on or before the 15th day of the month following the calendar month for which the report is made.

(c) Upon request by an authorized representative of the commission, invoices shall be submitted to support each entry in the report. A legible copy of each invoice must show the:

(1) invoice number and invoice date;

(2) trade name, license number, and address of the brewpub;

(3) trade name, license or permit number, and shipping address of the purchaser;

(4) brand name, type, number and size of containers, total cases, unit and or line-item extension price, and total sales price;

(5) origin of shipment and shipping date; and

(6) total gallons of malt beverage invoiced.

(d) As long as a brewpub license remains active, the monthly report required by this section must be filed each month even if no sales or shipments have been made.

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## SUBCHAPTER D. SALES OF ALCOHOLIC BEVERAGES NOT IN REGULAR COURSE OF BUSINESS

### 16 TAC §§41.41 - 41.43

New rules §§41.41 - 41.43 are adopted pursuant to the commission's authority under §5.31 of the Code, which allows the commission to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted new rules require the repeal of current rules §§41.41 - 41.43.

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## SUBCHAPTER E. PRIVATE CLUBS

### 16 TAC §§41.50 - 41.56

New rules §§41.50 - 41.56 are adopted pursuant to the commission's authority under §5.31 of the Code, which allows the commission to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted new rules require the repeal of current rules §§41.51 - 41.56.

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For further information, please call: (512) 206-3451



## SUBCHAPTER F. IDENTIFICATION STAMPS

### 16 TAC §41.60

New §41.60 is adopted pursuant to the commission's authority under §5.31 of the Code, which allows the commission to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted new rule does not impact any other current rules or statutes.

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 16, 2021.

TRD-202104585  
Shana Horton  
Rules Attorney  
Texas Alcoholic Beverage Commission  
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## TITLE 22. EXAMINING BOARDS

# PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

## CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER J. TABLE OF EQUIVALENTS FOR EXPERIENCE IN LANDSCAPE ARCHITECTURE

### 22 TAC §3.191

The Texas Board of Architectural Examiners (Board) adopts amendments to §3.191, concerning the Description of Experience Required for Landscape Architecture Registration by Examination. The amendments are adopted without changes to the proposed text published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6190). The rule will not be republished.

Reasoned Justification. This rulemaking action results from the Board's review of 22 Texas Administrative Code Chapter 3 under Texas Government Code §2001.039 and guidance issued by the Regulatory Compliance Division of the Office of the Governor (RCD). The notice of intention to review Chapter 3 was published in the *Texas Register* on March 26, 2021, (46 TexReg 2049). The agency did not receive any comments on the notice of intention to review. Additionally, after a preliminary staff review of Board rules to determine potential impacts on market competition, certain rules, including §3.191, were submitted to the RCD for review pursuant to Tex. Occ. Code §57.105(b). On June 16, 2021, pursuant to its authority under Tex. Occ. Code §57.106(d), the RCD issued its determination that §3.191, which describes the experience required for landscape architectural registration by examination, must be amended prior to readoption. The purpose of this rulemaking action is to implement the revisions required by the RCD.

The first issue identified by the RCD relates to a disparity between the number of years of experience required for registration by domestic and foreign graduates under former §3.191(a) and (b). Under the former rule, graduates of programs accredited by the Landscape Architecture Accreditation Board (LAAB) were required to complete two years of experience to be eligible for registration, whereas graduates of qualifying foreign programs (which are not accredited by LAAB) were required to complete three years of experience.

Under 22 Texas Administrative Code §3.21(a)(1)(D), a foreign program is a "qualifying" program if Education Credential Evaluators (ECE) or another organization acceptable to the Board certifies that the program is substantially equivalent to a doctorate, master's degree, or baccalaureate degree in landscape architecture in the United States. Notably, ECE is unable to certify that a foreign program is substantially equivalent to a LAAB-accredited degree. For that reason, the former rule required graduates of qualifying foreign programs to complete an additional year of experience. This additional experience was intended to supplement any potential deficit in educational preparation associated with a lack of certified equivalence with LAAB standards.

However, the RCD noted that a previous version of this rule, in effect until March 22, 2016, required foreign graduates to complete the same two-year experience requirement for domestic graduates, and that the evaluation performed by ECE both before and after the previous rule change remained the same. For that reason, and because the Board's rules continue to recognize

that foreign programs can be substantially equivalent to domestic degrees, the RCD determined that the discrepancy in required experience was inconsistent with state policy and not supported by statute.

To address this issue, the Board has amended former §3.191(b), which required that qualifying foreign graduates complete three years of experience. Instead, under adopted amendments to §3.191(a), all applicants for registration by examination will be required to complete the same two-year experience equivalent, regardless of whether the applicant graduated from a LAAB-accredited domestic program or a substantially equivalent foreign program.

The RCD also required the Board to amend former §3.191(e), which implemented minimum requirements for full-time and part-time employment and employment duration in recognizing qualifying work experience. Under the former rule, an applicant for registration was required to work at least thirty-five hours per week for a minimum of ten consecutive weeks to qualify for full-time credit toward the two-or-three-year experience requirement, or between twenty and thirty-four hours per week for a minimum of six consecutive months to qualify for half credit. As noted in staff's response to the RCD, this rule was based on the premise that an applicant who spent more time in a firm, for longer, would likely be incorporated more deeply into the firm's projects and exposed to a greater breadth of tasks compared to a similar employee who was employed only for short periods or a few hours per week.

However, the RCD expressed concern that the former rule could discourage aspiring landscape architects from seeking diverse or meaningful experience opportunities of shorter duration because credit was not available. In noting that longer employment did not guarantee deeper incorporation into a greater breadth of tasks, the RCD determined that the limitations in former §3.191(e) did not serve the statutory directive that applicants complete satisfactory experience and, therefore, the subsection was inconsistent with state policy.

To implement the RCD guidance, the adopted rule repeals the requirements relating to minimum weekly hours or duration of employment. Additionally, the rule has been amended to measure required experience in hour units, rather than years. Measuring the experience requirement in hours will eliminate the need to convert half-time or full-time work experience to annual equivalency. Rather, each qualifying work hour may be applied directly to the experience requirement for registration. The adopted rule requires all applicants for registration to complete 3,640 hours of experience in accordance with Table 22 TAC §3.191(a). This figure is equal to thirty-five hours per week (the minimum number of hours to qualify for full time experience under the current rule), multiplied by fifty-two weeks, multiplied by two years, and is therefore equivalent to the two-year experience requirement under the former rule.

Finally, the adopted rule implements RCD guidance relating to recognition of experience occurring prior to graduation from a professional degree program. Under former §3.191(g), an applicant could not earn credit for experience gained prior to the date the applicant completed the educational requirements for landscape architectural registration by examination. A similar requirement formerly applied to architectural applicants as well. However, following changes to the nationally recognized Architectural Experience Program (AXP), and corresponding TBAE rule changes, the requirement was dropped for architect applicants. Under the current AXP requirements, individuals become

eligible to participate in the AXP after earning a high school diploma or completing an established equivalent. In noting that TBAE relies on substantially the same authority to set experience standards for architecture and landscape architecture and that any inconsistencies between requirements should be reasonably justified by and consistent with evidence, the RCD determined there was no evidence that the opportunities to earn experience for landscape architectural students are measurably inferior to those available for architectural students. Therefore, the RCD concluded the restriction in former §3.191(g) was not supportable by state policy.

To address this issue, the rule has been amended to allow landscape architecture applicants to claim credit for experience gained after the date the applicant successfully earned a high school diploma or completed an established equivalent. As such, this amendment institutes an equivalency between the requirements for landscape architect applicants under Board rules and the AXP eligibility requirements for architect applicants.

#### Summary of Comments and Agency Response.

The Board did not receive any comments on the proposed rule.

Statutory Authority. The adoption of amended §3.191 is required under Tex. Occ. Code §57.106(e). Furthermore, Tex. Occ. Code §1051.202 authorizes the board to adopt reasonable rules as necessary to regulate the practice of landscape architecture and Tex. Occ. Code §1052.154 authorizes the Board to adopt rules requiring satisfactory experience for registration as a landscape architect.

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 19, 2021.

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Lance Brenton

General Counsel

Texas Board of Architectural Examiners

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Proposal publication date: September 17, 2021

For further information, please call: (512) 305-8519



## PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

### CHAPTER 72. BOARD FEES, LICENSE APPLICATIONS, AND RENEWALS

#### 22 TAC §72.18

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.18 (Criminal History) without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5719). The rule will not be republished.

The Board will adopt a new §72.18 in a separate rulemaking. As part of the Board's comprehensive rule revision effort, the purpose of the repeal is to make the Board's rules relating to the use of criminal convictions in determining an applicant's fitness

to receive a license to practice chiropractic simpler and easier to navigate.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §53.22, which requires the Board to adopt rules on the use of criminal convictions in determining an applicant's fitness to receive a license to practice chiropractic.

No other statutes or rules are affected by this repeal.

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 18, 2021.

TRD-202104648

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Effective date: December 9, 2021

Proposal publication date: September 10, 2021

For further information, please call: (512) 305-6700



## 22 TAC §72.18

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.18 (Criminal History) without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5720). The rule will not be republished. The current rule is being repealed in a separate rulemaking action.

The only purpose of this rulemaking is to remove language in the current rule about a licensee's or applicant's requirement to report criminal convictions and deferred adjudications to the Board. That language will be placed in a stand-alone rule (proposed new 22 TAC §72.19), making that information easier to find. Other than this change, the provisions about a licensee's or applicant's criminal history remain the same.

The Board received no comments concerning the new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §53.22, which requires the Board to adopt rules on the use of criminal convictions in determining an applicant's fitness to receive a license to practice chiropractic.

No other statutes or rules are affected by this new 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.

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TRD-202104649

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Effective date: December 9, 2021

Proposal publication date: September 10, 2021

For further information, please call: (512) 305-6700



## 22 TAC §72.19

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.19 (Requirement to Report a Conviction or Deferred Adjudication), without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5721). The rule will not be republished.

This rulemaking simply moves the language in the current 22 TAC §72.18 (Criminal History) about reporting convictions and deferred adjudications into a stand-alone rule, making it easier for licensees and applicants to find the information. Other than this change, the provisions about a licensee's or applicant's criminal history remain the same.

The Board received no comments about the proposed new rule.

The new rule is adopted under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), Texas Occupations Code §201.313 (which requires the Board to conduct criminal history checks on applicants for licensure), and Texas Occupations Code §53.22 (which requires the Board to consider an applicant's criminal background).

No other statutes or rules are affected by this new 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.

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TRD-202104650

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6700



## CHAPTER 77. ADVERTISING AND PUBLIC COMMUNICATIONS

### 22 TAC §77.1

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §77.1 (Advertising and Public Communications), without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5721). The rule will not be republished.

The Board will adopt a new §77.1 in a separate rulemaking. This rulemaking action will remove the current language in §77.1 concerning the use of "D.C." and similar terms in advertising and

public communications and put that language into a stand-alone rule.

The Board received no comments relating to the repeal of this rule.

The repeal is adopted under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic) and Texas Occupations Code §201.155 (which authorizes the Board to adopt rules to prohibit false, misleading, or deceptive advertising).

No other statutes or rules are affected by this repeal.

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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Christopher Burnett

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For further information, please call: (512) 305-6700



## 22 TAC §77.1

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §77.1 (Advertising and Public Communications), without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5722). The rule will not be republished.

This rulemaking simply removes the language in the current 22 TAC §77.1 about the use of "D.C." and similar terms, which will be placed into a stand-alone rule (new §77.3). The purpose of the change is make finding this information in the Board's rules easier.

The Board received one comment concerning this rule. The commentator seemed to suggest that the prohibition on licensees on using the term "cure" in advertising to describe the potential benefits of chiropractic services is overly broad because patients who appear in testimonials do not understand the technical definition of that term and that, therefore, licensees should not be responsible for the language of those patient testimonials. The Board disagrees. Licensees are responsible for all the content of their advertising, including any patient testimonials. This not a new prohibition; this language is part of the current §77.1. The Board respectfully declines to change the language of rule.

The rule is adopted under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic) and Texas Occupations Code §201.155 (which authorizes the Board to adopt rules to prohibit false, misleading, or deceptive advertising).

No other statutes or rules are affected by this new 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.

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Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6700



## 22 TAC §77.3

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §77.3 (Proper Use of "D.C." or Similar Terms and Restrictions), without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5723). The rule will not be republished.

This rulemaking simply removes the language in the current 22 TAC §77.1 about the proper use of "D.C." and similar terms, and places it in this new stand-alone rule. The purpose of moving this language into a stand-alone rule is to make finding this information in the Board's rules easier.

The Board received one comment concerning the new rule. The commentator asked the Board to reconsider the application of the rule to non-licensees (recent graduates awaiting licensure) in a private practice setting, allowing the non-licensee to be addressed as "doctor." The Board must respectfully disagree.

Under Texas law, only an individual with a current license to practice chiropractic may use the terms "doctor" or "Dr." While this new rule in subsection (d) does permit non-licensees who have earned an academic chiropractic to use "doctor of chiropractic," "D.C.," or "chiropractor" in advertising or public communications under specific restrictions, it does not permit a non-licensee to hold himself out as a chiropractor (which, again, requires a current Board-issued license) to others, especially patients. The Board appreciates the comment, but must decline to incorporate it into the rule.

The new rule is adopted under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic) and Texas Occupations Code §201.155 (which authorizes the Board to adopt rules to prohibit false, misleading, or deceptive advertising).

No other statutes or rules are affected by this new 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.

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Christopher Burnett  
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For further information, please call: (512) 305-6700



## PART 15. TEXAS STATE BOARD OF PHARMACY

### CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

#### 22 TAC §283.12

The Texas State Board of Pharmacy adopts amendments to §283.12, concerning Licenses for Military Service Members, Military Veterans, and Military Spouses. These amendments are adopted without changes to the proposed text as published in the September 24, 2021, issue of the *Texas Register* (46 TexReg 6330). The rule will not be republished.

The amendments specify that a copy of a permanent change of station order may be used as proof of a military spouse's residency and add a new service branch to the definition of armed forces of the United States, in accordance with House Bill 139.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Timothy L. Tucker, Pharm.D.  
Executive Director  
Texas State Board of Pharmacy  
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For further information, please call: (512) 305-8010



### CHAPTER 291. PHARMACIES SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

#### 22 TAC §291.34

The Texas State Board of Pharmacy adopts amendments to §291.34, concerning Records. These amendments are adopted without changes to the proposed text as published in the September 24, 2021, issue of the *Texas Register* (46 TexReg 6332) and will not be republished.

The amendments clarify that a pharmacist may provide an emergency refill of insulin or insulin-related equipment or supplies under certain conditions, in accordance with House Bill 1935.

The Board received a comment from Craig Chapman, R.Ph., with Mabank Family Pharmacy in support of the amendments and suggesting a revision to allow insulin to be provided in the "smallest available package" as the amendments allow for insulin-related equipment or supplies. The Board declines to make the change because the suggested language conflicts with §562.0541(d) of the Texas Pharmacy Act.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Timothy L. Tucker, Pharm.D.  
Executive Director  
Texas State Board of Pharmacy  
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For further information, please call: (512) 305-8010



### CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

#### 22 TAC §297.10

The Texas State Board of Pharmacy adopts amendments to §297.10, concerning Registration for Military Service Members, Military Veterans, and Military Spouses. These amendments are adopted without changes to the proposed text as published in the September 24, 2021, issue of the *Texas Register* (46 TexReg 6358). The rule will not be republished.

The amendments specify that a copy of a permanent change of station order may be used as proof of a military spouse's residency and add a new service branch to the definition of armed forces of the United States, in accordance with House Bill 139.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control

and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Timothy L. Tucker, Pharm.D.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



## PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

### CHAPTER 365. LICENSING AND REGISTRATION

#### 22 TAC §365.5

The Texas State Board of Plumbing Examiners (Board) adopts the repeal of 22 Texas Administrative Code §365.5, relating to Renewal of License, Registration or Endorsement. The repeal of 22 TAC §365.5 is adopted without changes to the proposed text as published in the August 6, 2021, issue of the *Texas Register* (46 TexReg 4818). The rule will not be republished.

#### Reasoned Justification:

Amendments to Chapter 1301 of the Texas Occupations Code passed by the 87th Legislature, Regular Session (2021), specifically section 18 of House Bill (HB) 363, which changed the three year renewal cycle for endorsements to one year to coincide with the renewal of the underlying license make this repeal and new rule necessary.

#### How the Rule will function:

The new rule replacing this repealed rule will function to implement section 1301.401 of the Texas Occupations Code.

#### Summary of Comments:

Staff received no comments on the proposed repeal.

#### Statutory Authority:

This repeal is adopted under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce Chapter 1301 of the Occupations Code (Plumbing License Law).

This repeal affects the Plumbing License Law. No other statute is affected.

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 18, 2021.

TRD-202104633

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

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Proposal publication date: August 6, 2021

For further information, please call: (512) 936-5216



#### 22 TAC §365.5

The Texas State Board of Plumbing Examiners (Board) adopts new 22 Texas Administrative Code §365.5, relating to Renewal of License, Registration or Endorsement. New 22 TAC §365.5 is adopted without changes to the proposed text as published in the August 6, 2021, issue of the *Texas Register* (46 TexReg 4819). The rule will not be republished.

#### Reasoned Justification:

Amendments to Chapter 1301 of the Texas Occupations Code passed by the 87th Legislature, Regular Session (2021), specifically section 18 of House Bill (HB) 363, which changed the three year renewal cycle for endorsements to one year to coincide with the renewal of the underlying license make this new rule necessary.

#### How the Rule will function:

The new rule will function to implement section 1301.401 of the Texas Occupations Code.

#### Summary of Comments:

Staff received no comments on the proposed new rule.

#### Statutory Authority:

This new rule is adopted under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce Chapter 1301 of the Occupations Code (Plumbing License Law). This amendment is also adopted under the authority of: (1) §1301.401(a), which mandates an annual renewal for licenses, registrations and now endorsements; (2) §1301.253, which authorizes the Board to assess fees; and (3) §1301.404, which authorizes the Board to require continuing education.

This new rule affects the Plumbing License Law. No other statute is affected.

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 18, 2021.

TRD-202104632

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

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Proposal publication date: August 6, 2021

For further information, please call: (512) 936-5216

◆ ◆ ◆  
**22 TAC §365.14**

The Texas State Board of Plumbing Examiners (Board) adopts the proposed repeal of 22 Texas Administrative Code §365.14, relating to Course Year for Continuing Professional Education. The proposed repeal of 22 TAC §365.14 is adopted without changes to the proposed text as published in the August 6, 2021, issue of the *Texas Register* (46 TexReg 4820). The rule will not be republished.

**Reasoned Justification:**

The Board adopts this repeal pursuant to amendments to Chapter 1301 of the Texas Occupations Code passed by the 87th Legislature, Regular Session (2021); specifically, section 21 of HB 363, which requires the Board to adopt rules to ensure that each licensee, registrant or endorsement holder has at least twelve (12) months to complete any continuing education or training program renewal requirement.

**How the Rule will function:**

The new rule replacing this repealed rule will function to implement section 1301.4055 of the Texas Occupations Code.

**Summary of Comments:**

Staff received no comments on the proposed repeal.

**Statutory Authority:**

This repeal is adopted under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code (Plumbing License Law).

This repeal affects the Plumbing License Law. No other statute is affected.

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-202104635

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

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Proposal publication date: August 6, 2021

For further information, please call: (512) 936-5216

◆ ◆ ◆  
**22 TAC §365.14**

The Texas State Board of Plumbing Examiners (Board) adopts new rule 22 Texas Administrative Code §365.14, relating to Course Year for Continuing Professional Education and Training Programs. New rule 22 Texas Administrative Code §365.14 is adopted with a change to the proposed text published in the August 6, 2021, issue of the *Texas Register* (46 TexReg 4821) for clarification purposes. The rule will be republished.

**Reasoned Justification:**

The Board adopts this new rule pursuant to amendments to Chapter 1301 of the Texas Occupations Code passed by the

87th Legislature, Regular Session (2021); specifically, section 21 of HB 363, which requires the Board to adopt rules to ensure that each licensee, registrant or endorsement holder has at least twelve (12) months to complete any continuing education or training program renewal requirement.

**How the Rule will function:**

The rule will function to implement section 1301.4055 of the Texas Occupations Code.

**Summary of Comments:**

The thirty day comment period ended September 5, 2021. During this period, TSBPE received comments regarding the proposed rule from Matthew Winn. The summarized comments and TSBPE's response to the comments follows:

Mr. Winn states "[t]oday's idea of 'virtual' training is not generally via telecommunications equipment, but rather via the internet." Mr. Will also states "[t]his provision addresses Continuing Education, but not training programs."

Response: TSBPE declines to make a change to the language in subsection (c) of proposed rule §365.14 as the term "telecommunications" was specifically chosen because it is defined by Merriam-Webster's Dictionary as "communication at a distance" and "technology that deals with telecommunication" in order to future-proof the rule regardless of advances in technology. <https://www.merriam-webster.com/dictionary/telecommunication>. Furthermore, the "internet" is actually an example of telecommunications equipment connected to form networks around the world. <https://www.merriam-webster.com/dictionary/Internet>. TSBPE included continuing professional education and training programs in the title of this rule because it address both given the directive in section 1301.4055 of the Texas Occupations Code to "adopt rules to ensure that each holder of a license, registration, or endorsement has at least 12 months to complete any continuing education required for the renewal of the license, registration, or endorsement." While section 1301.404(b) of the Texas Occupations Code provides that a "person who holds a license or endorsement . . . must complete at least six hours of continuing professional education annually," section 1301.405(a) provides that persons holding certain registrations "must annually complete at least six hours of approved training." Section 311.021(2)-(4) of the Texas Government Code presumes that the entire statute is intended to be effective; a just and reasonable result is intended; and a result feasible of execution is intended, accordingly staff interprets "continuing education required for renewal" in section 1301.4055 of the Texas Occupations Code to include both continuing professional education for licensees and endorsement holders and training for registrants as they are both annual renewal requirements, which is why it is in the title, but to further clarify that it applies to both staff will add training programs to subsection c. The commenter is correct that the board had considered defining courses in a separate rule; however, the board made a last minute decision to include the medium by which course may be taken in this rule instead. Nothing in chapter 1301 prohibits training from being taken through a correspondence course, so it will not be limited to the other two mediums suggested by the commenter as it seems contrary to the commenter's professed goal of flexibility.

**Statutory Authority:**

This new rule is adopted under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt

and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code (Plumbing License Law). This new rule is also adopted under the authority of Tex. Occ. Code §1301.4055, which provides for the Board to "adopt rules to ensure that each holder of a license, registration, or endorsement has at least 12 months to complete any continuing education required for the renewal of the license, registration, or endorsement." Additionally, this new rule is adopted under the authority of §1301.352, which provides for the Board to issue licenses or endorsements to persons that meet the requirements for licensure or endorsement as a master plumber, journeyman plumber, plumbing inspector, tradesman plumber-limited license holder, medical gas piping installation endorsement holder, water supply protection specialist, or multipurpose residential fire protection sprinkler specialist. Similarly, this new rule is adopted under the authority of §1301.3575 which provides for the Board to register persons who comply with the requirements of the chapter as a drain cleaner, drain cleaner-restricted registrant, and residential utilities installer.

This new rule affects the Plumbing License Law. No other statute is affected.

*§365.14. Course Year for Continuing Professional Education and Training Programs.*

(a) A licensee, drain cleaner registrant, drain cleaner-restricted registrant, residential utilities installer registrant or endorsement holder has twelve (12) months to obtain at least six (6) hours of continuing education or training required for a timely annual renewal.

(b) A person whose license, drain cleaner registration, drain cleaner-restricted registration, residential utilities installer registration or endorsement has been expired for less than two (2) years must complete at least six (6) hours of continuing education or training for each year the license, drain cleaner registration, drain cleaner-restricted registration, residential utilities installer registration or endorsement was expired.

(c) Continuing education and training program courses may be taken in person, via correspondence course or virtually by means of telecommunications equipment.

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 18, 2021.

TRD-202104634

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: December 8, 2021

Proposal publication date: August 6, 2021

For further information, please call: (512) 936-5216



## 22 TAC §365.15

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 Texas Administrative Code §365.15, relating to Curriculum Minimum Standards. Amendments to 22 Texas Administrative Code §365.15 are adopted without changes to the proposed text published in the August 6, 2021, issue of the *Texas Register* (46 TexReg 4822). The rule not be republished.

### Reasoned Justification:

Pursuant to amendments to Chapter 1301 of the Texas Occupations Code passed by the 87th Legislature, Regular Session (2021) specifically sections 19 and 20 of House Bill (HB) 363, which require the Board to establish the minimum curriculum standards for continuing education courses and training programs. Additionally, the legislation requires the Executive Director to approve continuing education courses and training programs that meet the standards set by the Board. Additional changes have been made to implement The Sunset Commission's recommendations regarding continuing education.

### How the Rule will function:

The rule will function to implement sections 1301.404 and 1301.405 of the Texas Occupations Code by establishing minimum curriculum standards.

### Summary of Comments:

The thirty day comment period ended September 5, 2021. During this period, the Board received comments regarding the proposed rule from Matthew Winn and William Heuberger. The summarized comments and the Board's response to the comments follows:

Mr. Winn stated that "it is unclear to me what 'tailored to' actually means" and that "there is no way to know who will be attending."

Response: Staff disagrees that "there is no way of knowing who will be attending." Pursuant to section 1301.405(a) of the Texas Occupations Code, annual training is mandatory for drain cleaners, drain cleaner-restricted registrants and residential utilities installers. Furthermore, section 1301.405(a) of the Texas Occupations Code also lists specific subject matter that training must cover including health and safety requirements, board-approved plumbing codes, and water conservation. Similarly, pursuant to section 1301.404(b) of the Texas Occupations Code annual continuing professional education is mandatory for license or endorsement holders. Moreover, section 1301.404(b) of the Texas Occupations Code lists specific subject matter that continuing professional education must cover which although similar, varies from the subject matter that training must cover. Additionally, pursuant to section 311.011 of the Texas Government Code, "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage. Accordingly, the clause "curriculum must be tailored to registrants" should be read in the context of the phrase that follows "if for use in a training program." Merriam Webster's dictionary defines tailored to mean "fashioned or fitted to resemble a tailor's work," and "custom made." <https://www.merriam-webster.com/dictionary/tailored>. Accordingly, curriculum for registrants should be tailored to or customized to fit the statutory requirements specific to registrants; similarly, curriculum for licensees or endorsement holders should be customized to fit the statutory requirements specific to licensees and endorsement holders.

Mr. Winn's next comment states that "[t]his seems to indicate a different course is required for annual renewal of the apprenticeship registrations than what is required for licensed plumbers."

Response: A different course is required pursuant to sections 1301.404 and 1301.405 of the Texas Occupations Code.

Mr. Winn states that §365.15(e)(9) "only recognizes the online training" and that this "discourages live/in person training."



Response: Staff disagrees, as nothing in this rule prohibits medical gas continuing education courses and training programs from being taken in person. Persons who desire to teach medical gas systems in person, via correspondence course or virtually by means of telecommunications equipment may do so provided they are approved by the Board. Courses that were selected for this list, like the online course on medical gas systems offered by the global non-profit that literally wrote the code book on health care facilities, were selected first and foremost because they focused on safety. Additionally, they have already been reviewed to meet curriculum and instructor standards. Moreover, the authenticity of a course completion certificate from these courses can be easily verified online by Board staff. What is more, in the interest of increasing the number of qualified plumbers, the Board is attempting to minimize the burden that continuing education can present to individuals licensed in multiple jurisdictions by allowing for more broad-based courses. The Board declines to make changes to the current list of courses.

Mr. Heuberger states that "I would like to see the following added to 365.15(e): 1. A course approved by TCEQ for water operators, wastewater operators, backflow prevention assembly testers and customer service inspectors. 2. Courses in construction safety approved by the University of Texas at Arlington and taught by a University of Texas at Arlington Authorized Construction Trainer."

The Board declines to add any curriculum to the list of courses in subsection (e). The Board may review the courses offered by TCEQ or other agencies and invite those instructor's whose curriculum meets the Board's minimum standards to also apply to offer their courses to the Board's licensees. However, because the Board wants to "keep licensees, registrants and endorsement holders informed of innovations, best practices and significant developments affecting the plumbing profession" as stated in subsection (a)(2) of the proposed rule it is unlikely that this list will expand significantly beyond current safety courses, which will be reviewed and potentially revised every few years. Should the Board decide to extend the pre-approved curriculum to include courses offered by institutions of higher education, it would do so for all institutions of higher education in the state whose curriculum "directly relates to the technical, legal or ethical aspects of plumbing, including grounds for discipline and professional responsibility" as stated in subsection (a)(1), instead of a particular institution's course offerings. While staff believes it is quite likely the courses listed by Mr. Huberger may meet the minimum curriculum standards, they would need to go through the standard review process nevertheless.

**Statutory Authority:**

This amendment is adopted under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code. This amendment is also adopted under the authority of Texas Occupations Code §1301.404(a)(1) and §1301.405(a-1)(1), which provide that the Board shall establish by rule minimum curriculum standards for continuing education courses and training programs. Additionally, this amendment is proposed under the authority of Texas Occupations Code §1301.404(c)(1) and §1301.405(a-2)(1), which provide for the Executive Director to approve continuing education courses and training programs that meet the minimum curriculum standards established by the Board. Finally, this amendment is adopted under §1301.253, which authorizes the Board to assess fees.

This adoption affects Chapter 1301 of the Texas Occupations Code. No other 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 November 18, 2021.

TRD-202104637

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: December 8, 2021

Proposal publication date: August 6, 2021

For further information, please call: (512) 936-5216



**22 TAC §365.24**

The Texas State Board of Plumbing Examiners (Board) adopts new rule 22 Texas Administrative Code §365.24 relating to Continuing Education and Training Exemptions. New rule 22 Texas Administrative Code §365.24 is adopted without changes to the proposed text published in the August 6, 2021, issue of the *Texas Register* (46 TexReg 4829). The rule will not be republished.

**Reasoned Justification:**

Texas Occ. Code §1301.404(f) and §1301.405(c) provide for the Board to exempt certain person from continuing education and training requirements. Currently, exemptions are contained in §365.5 Renewal of License, Registration or Endorsement; however, as part of ongoing clarification and organization efforts aimed at making its rules more accessible to the general public, exemptions within §365.5 are being made in a separate and distinct new §365.24 so that the information contained in each rule is more accurately conveyed by each rule's title. Additionally, by exempting military service members rather than merely granting them an extension to complete continuing education requirements the Board will ensure that military service members who rely on Chapter 55 of the Texas Occupations code do not unintentionally find that they cannot complete the accumulated continuing education or training requirements before their license, endorsement or registration becomes unrenovable because it has been expired for more than two years. Tex. Occ. Code §55.003; Tex. Occ. Code §1301.403(d). Exempting military service members will also ensure that military service members who serve on active duty for more than two years are able to retain their license, registration or endorsement.

**How the Rule will function:**

The new rule will function to implement sections 1301.404(f) and 1301.405(c) of the Texas Occupations Code.

**Summary of Comments:**

Staff received no comments on the proposed new rule.

**Statutory Authority:**

This new rule is adopted under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code. This new rule is also adopted under the authority of Tex. Occ. Code §1301.404(f) and §1301.405(c),

which authorizes the Board to exempt certain persons from continuing education and training 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 November 18, 2021.

TRD-202104638

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: December 8, 2021

Proposal publication date: August 6, 2021

For further information, please call: (512) 936-5216



## TITLE 28. INSURANCE

### PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

#### CHAPTER 141. DISPUTE RESOLUTION-- BENEFIT REVIEW CONFERENCE

##### 28 TAC §141.1

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §141.1, relating to Requesting and Setting a Benefit Review Conference. The amendments are adopted without changes to the proposed text published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6202). The rule will not be republished.

DWC adopts amendments to 28 TAC §141.1 to amend the name from "Site" to "Method of Conducting" in subsection (j) and add videoconference as a way that DWC can conduct a benefit review conference (BRC). Amended subsection (j) adds a requesting party's showing of good cause as a condition to DWC conducting a BRC in person.

**REASONED JUSTIFICATION.** Texas Labor Code §410.005 allows DWC the option to conduct a BRC by videoconference, telephone, or in person. Under Labor Code §410.005, a BRC will be conducted in person if DWC finds that the requesting party has good cause. The amendment to §141.1(j) is necessary to add videoconference as a way that DWC can conduct a BRC. Expanding the ways DWC conducts a BRC in §141.1(j) is also necessary to provide that DWC will hold a BRC in person if a requesting party shows good cause for conducting the BRC in person.

Labor Code §410.021 defines a BRC as a nonadversarial, informal dispute resolution proceeding. Under Labor Code §410.021, a BRC is designed to explain, orally or in writing, the rights of the respective parties to a workers' compensation claim and the procedures necessary to protect those rights. Labor Code §410.021 also provides that the purposes of the BRC include discussing the facts of the claim, reviewing available information to evaluate the claim, defining the issues in dispute, and mediating the

issues by agreement under Labor Code Chapter 410 and DWC's policies.

Labor Code §410.026 provides that benefit review officers (BROs) must mediate disputes between the parties; thoroughly inform all parties of their rights and responsibilities under the Texas Workers' Compensation Act; ensure that all documents and information relating to the injured employee's wages, medical condition, and any other information needed for the resolution of the disputed issues are contained in the claim file at the conference, especially when the injured employee is not represented by an attorney or other representative; and prepare a written report that details each issue not resolved at the BRC.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE.

**Commenters:** DWC received one written comment, and no oral comments. The commenter in support of the proposal is the Office of Injured Employee Counsel. DWC received no comments to change the proposal or against the proposal.

**Comment on §141.1.** One commenter supports the amendment to add videoconference as a way to conduct a BRC because use of technology may make the system more efficient.

**Agency Response to Comment on §141.1.** DWC appreciates the comment in support of amendments to §141.1.

**STATUTORY AUTHORITY.** The commissioner of workers' compensation adopts the amendments to 28 TAC §141.1 under Labor Code §§402.00111, 402.00116, 402.00128, 402.061, 410.005, 410.007, 410.021, 410.023, 410.025, 410.026, and 410.027.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner.

Labor Code §402.00128 provides that the commissioner shall implement division policy and may prescribe the form, manner, and procedure for transmitting information to the division.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §410.005 provides the ways the division conducts BRCs and contested case hearings and allows the division to conduct a BRC by telephone, videoconference, or in person on a showing of good cause as determined by the division.

Labor Code §410.007 provides that the division must determine the type of information that is most useful to parties to help resolve disputes regarding benefits and to publish a list of such information.

Labor Code §410.021 provides that a BRC is a nonadversarial, informal dispute resolution proceeding designed to explain the rights of the parties and the procedures needed to protect those rights, discuss and review the information to evaluate the claim, and mediate and resolve disputed issues by agreement.

Labor Code §410.023 provides that a party requesting a BRC must provide documentation of efforts made to resolve the dispute before requesting a BRC. It also directs the commissioner to adopt guidelines by rule regarding the type of information

needed to satisfy the documentation requirement and establish a process through which the division evaluates the requesting party's documentation. It also provides that the division may direct the parties to a disputed claim to meet in a BRC to reach agreement on the disputed issues.

Labor Code §410.025 provides that the commissioner may prescribe the scheduling of BRCs and expedited hearings, and the required notices related to the scheduling.

Labor Code §410.026 provides that a BRO may schedule an additional BRC if the BRO determines that available information related to the resolution of disputed issues was not produced at the first BRC, and the division has not already conducted a second BRC.

Labor Code §410.027 provides that the commissioner shall adopt rules for conducting BRCs and that a BRC is not subject to common law or statutory rules of evidence or procedure.

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 19, 2021.

TRD-202104671

Kara Mace

Deputy Commissioner of Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Effective date: December 9, 2021

Proposal publication date: September 17, 2021

For further information, please call: (512) 804-4703





# 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

Office of Consumer Credit Commissioner

### Title 7, Part 5

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Part 5, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept written comments received on or before the 30th day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this subchapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705, or by email to rule.comments@occc.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional public comment period prior to final adoption or repeal by the commission.

TRD-202104628

Matthew Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

Filed: November 18, 2021



Public Utility Commission of Texas

### Title 16, Part 2

The Public Utility Commission of Texas (commission) publishes this notice of intention to review Chapter 25, Substantive Rules Applicable to Electric Service Providers according to Texas Government Code §2001.039, *Agency Review of Existing Rules*. The text of the rule sections will not be published. The text of the rules may be found in the

Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at [www.puc.texas.gov](http://www.puc.texas.gov). Project Number 52757 is assigned to this proceeding.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency according to the Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039, this review is to assess whether the reason for adopting or readopting the rules continues to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each rule section in Chapter 25 continue to exist. If it is determined during this review that any section of Chapter 25 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding. This notice of intention to review Chapter 25 has no effect on the sections as they currently exist.

Interested persons may file comments electronically through the interchange on the commission's website by January 4, 2022. Reply comments may be submitted January 11, 2022. *When filing comments interested persons are requested to comment on the sections in the same order they are found in the chapter and to clearly designate which section is being commented upon.* All comments should refer to Project Number 52757.

The rules subject to this review are proposed for publication under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2016) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039 which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Texas Government Code §2001.039; Texas Utilities Code Annotated, Title II, Public Utility Regulatory Act; and Title IV, Chapters 161, 163, 181, 182, 183, 184, and 185.

TRD-202104636

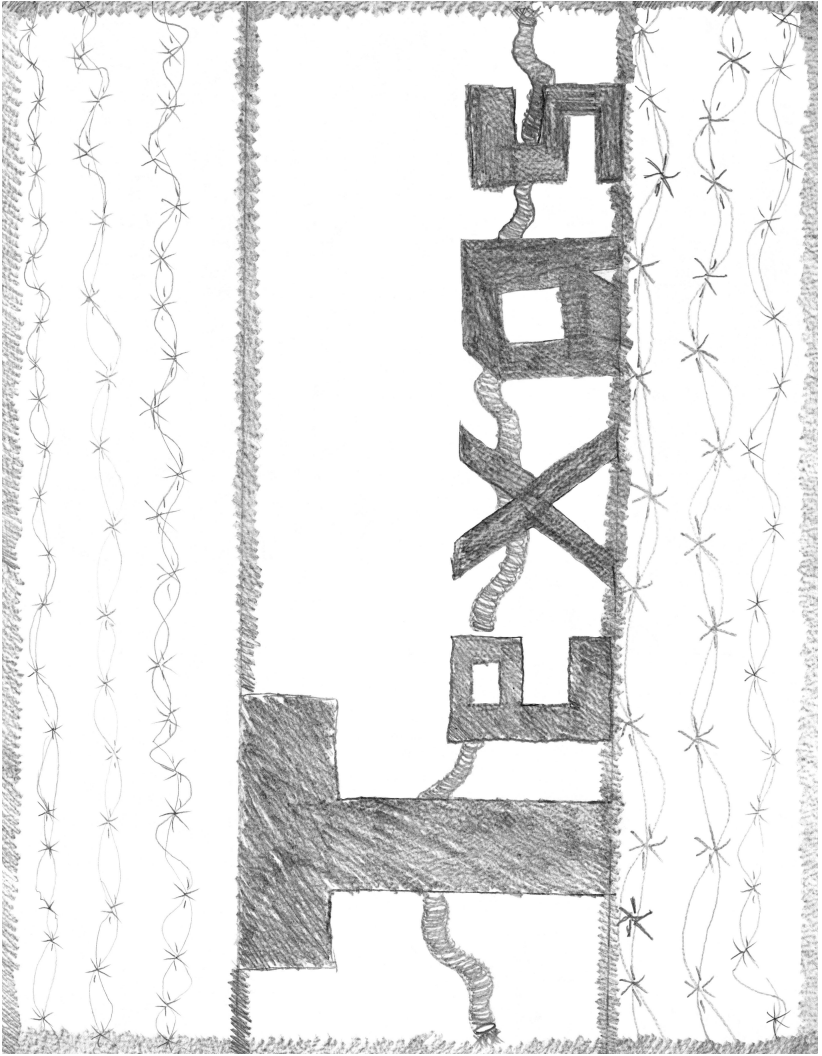
Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Filed: November 18, 2021





# TABLES &

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# GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 26 TAC §350.1431(c)

| HHSC ECI Sliding Fee Scale for Families Enrolled On or After September 1, 2015                                                     |                                                                                                       |
|------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| If the adjusted income is within the following % of the federal poverty guideline:                                                 | the maximum charge is equal to the following amounts or the full cost of services, whichever is less: |
| ≤ 100%                                                                                                                             | \$0                                                                                                   |
| >100% to ≤150%                                                                                                                     | \$5                                                                                                   |
| >150% to ≤200%                                                                                                                     | \$14                                                                                                  |
| > 200% to ≤250%                                                                                                                    | \$28                                                                                                  |
| > 250% to ≤300%                                                                                                                    | \$45                                                                                                  |
| > 300% to ≤350%                                                                                                                    | \$67                                                                                                  |
| > 350% to ≤400%                                                                                                                    | \$124                                                                                                 |
| > 400% to ≤450%                                                                                                                    | \$210                                                                                                 |
| > 450% to ≤500%                                                                                                                    | \$313                                                                                                 |
| > 500% to ≤550%                                                                                                                    | \$433                                                                                                 |
| > 550% to ≤600%                                                                                                                    | \$474                                                                                                 |
| > 600% to ≤650%                                                                                                                    | \$515                                                                                                 |
| > 650% to ≤700%                                                                                                                    | \$557                                                                                                 |
| > 700% to ≤750%                                                                                                                    | \$598                                                                                                 |
| > 750% to ≤800%                                                                                                                    | \$639                                                                                                 |
| > 800% to ≤850%                                                                                                                    | \$680                                                                                                 |
| > 850% to ≤900%                                                                                                                    | \$722                                                                                                 |
| > 900% to ≤950%                                                                                                                    | \$763                                                                                                 |
| > 950% to ≤1000%                                                                                                                   | \$804                                                                                                 |
| > 1000% of the federal poverty guidelines                                                                                          | the full cost of services.                                                                            |
| If the parent:                                                                                                                     | then the family monthly maximum payment equals the:                                                   |
| refuses to attest in writing that information about their third-party coverage, family size, and gross income is true and accurate | full cost of services.                                                                                |



The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

### Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Asif Hemani*; Cause No. D-1-GN-18-001817 in the 126th Judicial District Court, Travis County, Texas.

Background: Defendant Asif Hemani previously owned a former gas station and convenience store with an under-ground storage tank system located in Alvarado, Johnson County, Texas. The State filed a civil enforcement suit in April of 2018 on behalf of the Texas Commission on Environmental Quality, under Chapter 26, Subchapter I of the Texas Water Code and related regulations, against the Defendant for improperly abandoning two underground fuel storage tanks on his property.

Proposed Settlement: The parties propose an Agreed Final Judgment which provides for an award to the State of \$2,625.00 in administrative penalties, \$9,375.00 in civil penalties, and \$3,000 in attorney's fees.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Shea Pearson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911; email: Shea.Pearson@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202104673  
Austin Kinghorn  
General Counsel  
Office of the Attorney General  
Filed: November 19, 2021

## Comptroller of Public Accounts

### Certification of the Average Closing Price of Gas and Oil - October 2021

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period October 2021 is \$48.20 per barrel for the three-month period beginning on July 1, 2021, and ending September 30, 2021. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of October 2021, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period October 2021 is \$2.92 per mcf for the three-month period beginning on July 1, 2021, and ending September 30, 2021. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of October 2021, from a qualified low-producing well, is eligible for a 50% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of October 2021 is \$80.14 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of October 2021, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of October 2021 is \$5.58 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from gas produced during the month of October 2021, from a qualified low-producing gas well.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-202104629  
William Hamner  
Special Counsel for Tax Administration  
Comptroller of Public Accounts  
Filed: November 18, 2021

## Concho County Commissioner's Court

### Rural Nursing Home Bed Waiver Request

The Concho County Commissioner's Court is requesting a rural nursing home bed waiver for a 45-bed nursing facility in Eden, Texas. The following comments and proposals will be reviewed at the commissioners' court December 14, 2021, at the Concho County Courthouse located at 152 N Roberts Ave., Paint Rock, Texas 76866. The Commissioners' Court will convene at 10:00 a.m. Comments and proposals can be sent prior to the meeting to the attention of Judge David Dillard, Concho County Courthouse located at 152 N Roberts Ave., Paint Rock, Texas 76866 or presented in person at the commissioner's court meeting on December 14, 2021, 10:00 a.m. at the Concho County Courthouse located at the address listed above.

- i. comments on whether a new Medicaid nursing facility should be requested; and
- ii. proposals from persons or entities interested in providing additional Medicaid-certified beds in the county, including persons or entities currently operating Medicaid-certified facilities with high occupancy rates.

HHSC, in its sole discretion, may eliminate from participating in the process persons or entities that submit false or fraudulent information.

TRD-202104642

David Dillard

County Judge

Concho County Commissioner's Court

Filed: November 18, 2021

## 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 **January 5, 2022**. 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 **January 5, 2022**. 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: BOLLMAN INDUSTRIES INC; DOCKET NUMBER: 2021-0783-WQ-E; IDENTIFIER: RN103795795; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2021-0222-AIR-E; IDENTIFIER: RN100542281; LOCATION: Channelview, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 115.722(c)(1), 116.115(c), and 122.143(4), New Source Review (NSR) Permit Numbers 1768, PSDTX1272, and N142, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O1426, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A and 37, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emis-

sions, and failing to limit highly reactive volatile organic compounds emissions to 1,200 lbs or less per one-hour block period; and 30 TAC §116.115(c) and §122.143(4), NSR Permit Numbers 2128 and 6245, SC Number 1, FOP Number O1426, GTC and STC Numbers 37 and 38, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$26,251; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$10,500; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Kleinwood Joint Powers Board; DOCKET NUMBER: 2020-0464-MWD-E; IDENTIFIER: RN102328580; LOCATION: Spring, Harris 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 WQ0011409001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$12,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$4,950; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 764-3500.

(4) COMPANY: MIDLAND BASIN RV PARK LLC; DOCKET NUMBER: 2021-0417-PWS-E; IDENTIFIER: RN107349532; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: \$8,000; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(5) COMPANY: Monarch Utilities I, L.P.; DOCKET NUMBER: 2021-0550-PWS-E; IDENTIFIER: RN101450286; LOCATION: Pottsboro, Grayson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids, based on the locational running annual average; PENALTY: \$4,125; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: NORTHERN HILLS DEVELOPMENT CO., INCORPORATED; DOCKET NUMBER: 2021-0274-MLM-E; IDENTIFIER: RN101267565; LOCATION: Denison, Grayson 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 maintain a drought contingency plan which includes all elements for municipal use by a retail public supplier; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.45(f)(1), by failing to maintain a water purchase contract available for review to the executive director in order that production, storage, service pump, or pressure maintenance capacity may be properly evaluated; 30 TAC §290.46(e)(3)(A) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D license or higher; 30 TAC §290.46(f)(2) and (3)(A)(ii) and (iii), (III), (B)(ii), (D)(i) and (vii), (E)(ii) and (iii), (iv), and (ix), and (F), by failing to maintain water works operations and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other un-

acceptable plumbing practices are permitted; 30 TAC §290.46(1), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(z), by failing to create a nitrification action plan for all systems distributing chloraminated water; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 90910126 for Fiscal Years 2019, 2020, and 2021; 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 §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: \$12,797; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: TAMKO Building Products LLC; DOCKET NUMBER: 2021-1019-AIR-E; IDENTIFIER: RN100664853; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: asphalt roofing manufacturing plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of the emissions event; and 30 TAC §116.115(c), New Source Review Permit Number 4421A, Special Conditions Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$2,601; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202104654

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: November 19, 2021



#### 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 166972

**APPLICATION.** TXI Operations, LP, 1503 LBJ Freeway, Suite 400, Dallas, Texas 75234-6007 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 166972 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at 1825 Farm-to-Market Road 546, McKinney, Collin County, Texas 75069. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.162222&lng=-96.58&zoom=13&type=r>. This application was submitted to the TCEQ on November 1, 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 November 5, 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/](http://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:

**Monday, January 10, 2022, 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 914-819-659. 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, (914) 614-3221 and enter access code 743-123-419.

Additional information will be available on the agency calendar of events at the following link: <https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

**RESPONSE TO COMMENTS.** A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

**CENTRAL/REGIONAL OFFICE.** The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

**INFORMATION.** If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from TXI Operations, LP, 1503 LBJ Freeway, Suite 400, Dallas, Texas 75234-6007, or by calling Mr. Jesse Martindale, Environmental Engineer II at (972) 647-3742.

Notice Issuance Date: November 16, 2021

TRD-202104627

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 17, 2021



### Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 5, 2022**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 5, 2022**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Sammy Drew Womack; DOCKET NUMBER: 2019-1608-MSW-E; TCEQ ID NUMBER: RN110672748; LOCATION: approximately 0.75 miles southeast of the intersection of Farm-to-Market 920 and County Road 3736 near Bridgeport, Wise County; TYPE OF FACILITY: municipal solid waste (MSW) site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$3,937; STAFF ATTORNEY: John S. Merculief II, Litigation, MC 175, (512) 239-6944; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202104656

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: November 19, 2021



### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 5, 2022**. 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 January 5, 2022**. 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: A M & H Enterprises LLC dba Salt Creek Grocery & Grill; DOCKET NUMBER: 2021-0323-PST-E; TCEQ ID NUMBER: RN101557502; LOCATION: 9098 West Highway 199, Springtown, Parker County; TYPE OF FACILITY: underground storage tank (UST) system and a fleet refueling facility; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §33.50(b)(1)(A), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; and TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of detailed inventory control records at least once every 30 days in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons; PENALTY: \$4,500; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: C & D WASTE, LTD. And ZAHN ENTERPRISES, INC.; DOCKET NUMBER: 2019-1128-MSW-E; TCEQ ID NUMBER: RN102643368; LOCATION: 7702 North Avenue P, Lubbock, Lubbock County; TYPE OF FACILITY: Type IV landfill; RULES VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste (MSW) - specifically, 781,182 cubic yards of construction and demolition de-

bris were disposed of at the facility in unauthorized areas; and 30 TAC §§330.133(b), 330.141(a), and 330.543(a), by failing to immediately remove and properly dispose of MSW deposited in unauthorized areas of the landfill including waste located outside the permitted boundary, buffer zones, and rights-of-way; PENALTY: \$11,025; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(3) COMPANY: City of Scottsville; DOCKET NUMBER: 2019-0935-WQ-E; TCEQ ID NUMBER: RN110729662; LOCATION: 7651 East Highway 80, Marshall, Harrison County; TYPE OF FACILITY: Sugar Creek Lift Station Sanitary Sewer Overflow; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state - specifically, a sanitary sewer overflow occurred at the Sugar Creek Lift Station's wet well, discharging wastewater to the area surrounding the lift station and into an unnamed tributary of Eight Mile Creek; PENALTY: \$7,875; 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-202104655  
Charmaine Backens  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: November 19, 2021



### Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 7

The Texas Commission on Environmental Quality (TCEQ and commission) will conduct a public hearing to receive testimony regarding proposed revision to 30 Texas Administrative Code Chapter 7, Memoranda of Understanding, §7.103, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

This rulemaking is in response to Senate Bill 703, 87th Texas Legislature, which would amend the Memorandum of Understanding between the TCEQ, the Texas Parks and Wildlife Department, and the Texas Department of Agriculture regarding interagency coordination on regulating the aquaculture industry.

#### Virtual Public Hearing

The commission will hold a virtual public hearing on this proposal on January 4, 2022, at 2:00 p.m. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

#### Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by January 3, 2022. To register for the hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on January 3, 2022, to those who register for the hearing.

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

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_ZjQ-1MjYxMGUtMzFjMi00NTBkLTllYzQtNWQ5ZDRiYjY0Yjc2%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcastMeeting%22%3a%7d&btype=a&role=a](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZjQ-1MjYxMGUtMzFjMi00NTBkLTllYzQtNWQ5ZDRiYjY0Yjc2%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcastMeeting%22%3a%7d&btype=a&role=a)

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RE-LAY-TX (TDD). Requests should be made as far in advance as possible.

#### Written Comments

Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2021-021-007-OW. The comment period closes January 5, 2022. Please choose one of the methods provided to submit your *written* comments.

Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Laurie Fleet, Water Quality Division, (512) 239-5445.

TRD-202104669

Guy Henry  
Deputy Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: November 19, 2021



### Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 114 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revision to 30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution from Motor Vehicles, §§114.1, 114.50, 114.82, and corresponding revisions to the state implementation plan (SIP) under the requirements of the Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed rulemaking would implement revisions required by Senate Bill 604, 86th Texas Legislature, Title 30 TAC Chapter 114 to comply with Texas Transportation Code, Chapter 504. This rule project, if adopted, will be submitted to the EPA to revise the SIP.

#### Virtual Public Hearing

The commission will hold a virtual public hearing on this proposal on January 4, 2022, at 10:00 a.m. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

## Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by January 3, 2022. To register for the hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on January 3, 2022, to those who register for the hearing.

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

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_MmM-0MTczNDAtY2MyNS00NDM2LWJiMjMtNGJlZWJMTi0MDc0%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcastMeeting%22%3atrue%7d&btype=a&role=a](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MmM-0MTczNDAtY2MyNS00NDM2LWJiMjMtNGJlZWJMTi0MDc0%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcastMeeting%22%3atrue%7d&btype=a&role=a)

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RE-LAY-TX (TDD). Requests should be made as far in advance as possible.

## Written Comments

Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2021-029-114-AI. The comment period closes January 5, 2022. Please choose one of the methods provided to submit your *written* comments.

Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Nicholas Landuyt, Air Quality Division, (512) 239-4905.

TRD-202104667

Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 19, 2021



## Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 336

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revision to 30 Texas Administrative Code Chapter 336, Radioactive Substance Rules, §336.357, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement United States Nuclear Regulatory Commission (NRC) compatibility requirements regarding physical protection of Category 1 and Category 2 quantities of radioactive materials.

## Virtual Public Hearing

The commission will hold a virtual public hearing on this proposal on January 6, 2022, at 10:00 a.m. The hearing is structured for the receipt

of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

## Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by January 5, 2022. To register for the hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on January 5, 2022, to those who register for the hearing.

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

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_MmM-0MTczNDAtY2MyNS00NDM2LWJiMjMtNGJlZWJMTi0MDc0%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcastMeeting%22%3atrue%7d&btype=a&role=a](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MmM-0MTczNDAtY2MyNS00NDM2LWJiMjMtNGJlZWJMTi0MDc0%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcastMeeting%22%3atrue%7d&btype=a&role=a)

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RE-LAY-TX (TDD). Requests should be made as far in advance as possible.

## Written Comments

Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2021-026-336-WS. The comment period closes January 10, 2022. Please choose one of the methods provided to submit your *written* comments.

Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Hans Weger, Radioactive Materials Division, (512) 239-6465.

TRD-202104665

Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 19, 2021



## Texas Ethics Commission

### List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Scarlett Scalzo at (512) 463-5800.

**Deadline: Semiannual Report due July 15, 2021 for Political Committees**

Rafael Alcoser, San Antonio Young Democrats, 3000 IH 10 West, San Antonio, Texas 78201

Charles Anderson, Texas Legislative Rural Caucus, P.O. Box 2910, Austin, Texas 78768

Matt Armstrong, We Love Aubrey, 1011 Surrey Ln. Bldg. 200, Flower Mound, Texas 75022

James D. Blume, The Committee to Elect Gena Slaughter and Dorothea Ocker, 111 W. Spring Valley Rd., Ste. 250, Richardson, Texas 75081

Travis A. Bryan, Texas Senate District 11, P.O. Box 7334, Pasadena, Texas 77508

Ryan Cagney, Texans for Ethical Leadership, 823 Congress Ave., Ste. 150, Austin, Texas 78701

Kimberly K. Chavez, Taylor County Democratic PAC (CEC), 3525 Carnation Ct., Abilene, Texas 79606

Logan M. Cheney, Fight for Austin, 5609 Tura Ln. Unit B, Austin, Texas 78721

Sandra Crenshaw, Democrats Choice For The People's Voice, P.O. Box 150888, Dallas, Texas 75315

Angela Darden, Move Tarrant Forward, 2716 York Ct., Southlake, Texas 76092

Jeanie M. Davilla, Heart Of Texas Apartment Assoc., 4201 Lake Short Dr., Ste. H, Waco, Texas 78710

Wendy R. Davis, Wendy R. Davis for Governor, Inc., P.O. Box 1039, Fort Worth, Texas 76101

Chanley Delk, Big Spring Professional Firefighters PAC, 2210 S County Road 1085, Midland, Texas 79706

Mildred Escobedo, People First, 903 E. Bugambilia, Hidalgo, Texas 78557

Joshua S. Finkenbinder, Texas Combat Veterans, 909 Hampshire, Grand Prairie, Texas 75050

Victor Garza, Hispanic Pac of Dallas, 1705 Yorkshire Dr., Richardson, Texas 75082

Anna Golden, Focus On The Kids PAC, 2100 E Gann Hill Dr., Cedar Park, Texas 78613

Philip A. Harris, Dark Money PAC, 7001 Boulevard 26, Ste. 331, North Richland Hills, Texas 76180

**Deadline: Semiannual Report due July 15, 2021 for Candidates**

Gregory C. Alvord, 1221 Spanish Moss Dr., Aubrey, Texas 76227

Michael D. Antalan, 9550 Spring Green Blvd. #123, Katy, Texas 77494

Daniel Davis Clayton, P.O. Box 151122, Dallas, Texas 75315

Sandra Crenshaw, P.O. Box 15088, Dallas, Texas 75315

Randle C. Daniels, 5021 Locke Ave., Fort Worth, Texas 76107

Earl W. Davis II, 2822 Cr. 2161, P.O. Box 1113, Clarksville, Texas 75426

Edward W. Espinosa, P.O. Box 160233, Austin, Texas 78716

Matthew Taylor Flores, 5707 4th Ave. #710, Canyon, Texas 79015

Stephen P. Gunnels, 13815 Barons Bridge, Houston, Texas 77069

Angela K. Hayes, 4848 Pin Oak Park, Apt. 425, Houston, Texas 77081

Gerson I. Hernandez, 102 E. Shady Grove Rd., Grand Prairie, Texas 75050

Finnigan Jones, 1133 W. Tucker Blvd., Arlington, Texas 76013

Claver T. Kamau-Imani, 11839 Moss Branch Rd., Houston, Texas 77043

Casey W. Littlejohn, 212 Mesa Dr., Glenn Heights, Texas 75154

Jacinto Martinez, 1230 Duke Rd., San Antonio, Texas 78264

Larry McKinzie, 3930 Porter Street, Houston, Texas 77021

Celina D. Montoya, P.O. Box 6048, San Antonio, Texas 78209

Deondre Moore, 9803 W Sam Houston, Pkwy. S, Houston, Texas 77099

Matthew S. Muller, 1021 Main St. #1275, Houston, Texas 77002

Anna L. Nunez, 1320 Heights Blvd., Apt. 2, Houston, Texas 77008-4253

Jessica M. Pallett, 1308 Kiowa Dr., Arlington, Texas 76012

Alfredo M. Ramirez Jr., 2056 Hardee Pass, San Antonio, Texas 78253

Gocha Allen Ramirez, 886 Coyote Dr., Rio Grande City, Texas 78582

Jennifer V. Ramos, 5910 Wales St., San Antonio, Texas 78223

Colin D. Ross, 813 Henderson St., Houston, Texas 77007

Natasha Demming Ruiz, 8834 Woodlyn Rd., Houston, Texas 77078

Deborah L. Russell, 1143 Shady Ln #2127, Austin, Texas 78721

Angeanette Thibodeaux, 6713 Cathcart, Houston, Texas 77091

Aubrey R. Thoede, P.O. Box 86, Barker, Texas 77413-0086 (\$2,500)

Ruben Villarreal, P.O. Box 1975, Pasadena, Texas 77501 (\$2,000)

Ernest B. White III, P.O. Box 210896, Dallas, Texas 75211-00896 (\$1,000)

TRD-202104630

Anne Temple Peters

Executive Director

Texas Ethics Commission

Filed: November 18, 2021



## Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medicaid Biennial Calendar Fee Review

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on December 13, 2021, at 9:30 a.m., to receive public comments on proposed Medicaid payment rates for the Medicaid Biennial Calendar Fee Review.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL:

<https://attendee.gotowebinar.com/register/7233576367066930448>

Webinar ID: 487-075-035

After registering, you will receive a confirmation email containing information about joining the hearing. You can also dial in using your phone by calling:

Conference Number: (415) 665-0060

Phone Audio Passcode: 377-443-173

If you are new to GoToWebinar, please download the GoToMeeting app at <https://global.gotomeeting.com/install/626873213> before the hearing starts.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

Members of the public may attend the rate hearing in person, which will be held in the Public Hearing Room 125 in the John H Winters Building located at 701 W 51st Street, Austin, Texas or may access a live stream of the meeting by following the link above. For the live stream, select the "Winters Live" tab.

**Proposal.** The payment rates for the Medicaid Biennial Calendar Fee Review are proposed to be effective March 1, 2022, for the following services:

Physician Administered Drugs Vaccines and Toxoids

Q Codes NDCX

**Methodology and Justification.** The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps);

**Rate Hearing Packet.** A briefing packet describing the proposed payment rates will be made available at <https://pfd.hhs.texas.gov/rate-packets> on or after December 3, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [PFDAcuteCare@hhs.texas.gov](mailto:PFDAcuteCare@hhs.texas.gov).

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to [PFDAcuteCare@hhs.texas.gov](mailto:PFDAcuteCare@hhs.texas.gov). In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 Guadalupe St., Austin, Texas 78751.

**Preferred Communication.** During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202104639

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: November 18, 2021



## Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medicaid Medical Policy Review of Physician Administered Drugs - Vaccines and Toxoids

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on December 13, 2021, at 9:30 a.m., to receive public comments on proposed Medicaid payment rates for the Medicaid Medical Policy Review of Physician Administered Drugs (PAD) - Vaccines and Toxoids.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL: <https://attendee.gotowebinar.com/register/7233576367066930448>

Webinar ID: 487-075-035

After registering, you will receive a confirmation email containing information about joining the hearing. You can also dial in using your phone by calling:

Conference Number: (415) 655-0060

Phone Audio Passcode: 377-443-173

If you are new to GoToWebinar, please download the GoToMeeting app at <https://global.gotomeeting.com/install/626873213> before the hearing starts.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

Members of the public may attend the rate hearing in person, which will be held in the Public Hearing Room 125 in the John H Winters Building located at 701 W 51st Street, Austin, Texas or access a live stream of the meeting here. For the live stream, select the "Winters Live" tab.

**Proposal.** The payment rates for the Medicaid Medical Policy Review of PAD Vaccines are proposed to be effective May 1, 2022, for the following services:

B(1) PAD Comprehensive Policy Review

B(2) PAD Vaccine Administration Policy Review

**Methodology and Justification.** The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps) and the THSteps Comprehensive Care Program (CCP).

**Rate Hearing Packet.** A briefing packet describing the proposed payment rates will be made available at <https://pfd.hhs.texas.gov/rate-packets> on or after December 3, 2021. Interested parties may obtain a



copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [PFDAcuteCare@hhs.texas.gov](mailto:PFDAcuteCare@hhs.texas.gov).

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to [PFDAcuteCare@hhs.texas.gov](mailto:PFDAcuteCare@hhs.texas.gov). In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 Guadalupe St., Austin, Texas 78751.

**Preferred Communication.** During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible, for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202104641  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: November 18, 2021



#### Notice of Public Hearing on Proposed Medicaid Payment Rates for the Special Fee Review of RELiZORB

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on December 13, 2021, at 9:30 a.m., to receive public comments on proposed Medicaid payment rates for the Special Fee Review of RELiZORB.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL: <https://attendee.gotowebinar.com/register/7233576367066930448>

Webinar ID: 487-075-035

After registering, you will receive a confirmation email containing information about joining the hearing. You can also dial in using your phone by calling:

Conference Number: (415) 655-0060

Phone Audio Passcode: 377-443-173

If you are new to GoToWebinar, please download the GoToMeeting app at <https://global.gotomeeting.com/install/626873213> before the hearing starts.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

Members of the public may attend the rate hearing in person, which will be held in the Public Hearing Room 125 in the John H Winters Building located at 701 W 51st Street, Austin, Texas or may access a live stream of the meeting by following the link above. For the live stream, select the "Winters Live" tab.

**Proposal.** The payment rates for the Medicaid Special Fee Review of RELiZORB are proposed to be effective March 1, 2022.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8023, which addresses the reimbursement methodology for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS); and

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners.

**Rate Hearing Packet.** A briefing packet describing the proposed payment rates will be made available at <https://pfd.hhs.texas.gov/rate-packets> on or after December 3, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [PFDAcuteCare@hhs.texas.gov](mailto:PFDAcuteCare@hhs.texas.gov).

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to [PFDAcuteCare@hhs.texas.gov](mailto:PFDAcuteCare@hhs.texas.gov). In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 Guadalupe St., Austin, Texas 78751.

**Preferred Communication.** During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible, for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202104640  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: November 18, 2021



#### Texas Higher Education Coordinating Board

##### Notice of Opportunity to Comment on Proposed Field of Study Curriculum for Business Administration

The Texas Higher Education Coordinating Board (THECB or Coordinating Board) staff is providing an opportunity for written public comment on a revision of the Field of Study Curriculum for Business Administration.

Texas Education Code Chapter 61, Subchapter S establishes policies to facilitate statewide transfer, including the Field of Study Curriculum. Institutions must accept partially or fully completed Field of Study Curricula for academic credit toward the degree program in which the

transfer student enrolls (Tex. Educ. Code §61.823). The Coordinating Board has promulgated rules related to transfer policy in 19 Texas Administrative Code Ch. 1, Subchapter V, and Ch. 4, Subchapter B. Posting requirements may be found in 19 TAC §4.33(f) and §1.239(b).

The Business Administration Discipline-Specific Subcommittee met on October 26-27, 2021, to consider and make recommendations to the Texas Transfer Advisory Committee regarding the Field of Study Curriculum (FOSC) for this discipline. On November 10, 2021, the Texas Transfer Advisory Committee adopted the subcommittee recommendations for the designated Texas Core Curriculum courses and the Discipline Foundation Courses and recommended their submission to the Commissioner of Higher Education for final approval.

The recommended courses are as follows:

**Designated Core Courses in the Field of Study:** ECON 2301: Principles of Macroeconomics; MATH 1324: Mathematics for Business & Social Science

**Discipline Foundation Courses (12 semester credit hours):** ECON 2302: Principles of Microeconomics; ACCT 2301: Principles of Financial Accounting; ACCT 2302: Principles of Managerial Accounting; BUSI 1301: Business Principles

In addition to these courses, each general academic institution will have the opportunity to submit to the Coordinating Board six (6) semester credit hours of **Directed Electives** selected by the institution from the Academic Course Guide Manual. The complete Field of Study Curriculum will consist of the Designated Core Courses and Discipline Foundation Courses listed above, as well as Directed Electives selected by the relevant general academic institutions in compliance with the transfer rules in Ch. 4, Subchapter. B, including 19 TAC §§4.23(4), 4.32(b)(3), and 4.33.

General academic institutions will be required to transfer these courses and apply them for academic credit towards degree programs with majors in the following CIP Codes:

52.0201: Business Administration and Management, General

52.0101: Business/Commerce, General

52.0301: Accounting

52.0801: Finance, General

52.1401: Marketing/Marketing Management, General

Written comments about the proposed changes must be sent to Elizabeth Mayer, Policy Director, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email to Elizabeth.Mayer@highered.texas.gov. Comments must be **received by 5:00 p.m., January 14, 2022**, to be considered.

TRD-202104659

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Filed: November 19, 2021



### Notice of Opportunity to Comment on Proposed Field of Study Curriculum for Criminal Justice

The Texas Higher Education Coordinating Board (THECB or Coordinating Board) staff is providing an opportunity for written public comment on a revision of the Field of Study Curriculum for Criminal Justice.

Texas Education Code Chapter 61, Subchapter S establishes policies to facilitate statewide transfer, including the Field of Study Curriculum. Institutions must accept partially or fully completed Field of Study Curricula for academic credit toward the degree program in which the transfer student enrolls (Tex. Educ. Code §61.823). The Coordinating Board has promulgated rules related to transfer policy in 19 Texas Administrative Code Ch. 1, Subchapter V, and Ch. 4, Subchapter B. Posting requirements may be found in 19 TAC §4.33(f) and §1.239(b).

The Criminal Justice Discipline-Specific Subcommittee met on September 28-29, 2021, to consider and make recommendations to the Texas Transfer Advisory Committee regarding the Field of Study Curriculum (FOSC) for this discipline. On November 10, 2021, the Texas Transfer Advisory Committee adopted the subcommittee recommendations for the designated Texas Core Curriculum courses and the Discipline Foundation Courses and recommended their submission to the Commissioner of Higher Education for final adoption.

The recommended courses are as follows:

**Designated Core Courses in the Field of Study:** CRIJ 1301: Introduction to Criminal Justice

**Discipline Foundation Courses (12 semester credit hours):** CRIJ 1306: Court Systems & Practices; CRIJ 1310: Fundamentals of Criminal Law; CRIJ 2313: Correctional Systems & Practices; CRIJ 2328: Police Systems & Practices.

In addition to these courses, each general academic institution will have the opportunity to submit to the Coordinating Board six (6) semester credit hours of **Directed Electives** selected by the institution from the Academic Course Guide Manual. The complete Field of Study Curriculum will consist of the Designated Core Courses and Discipline Foundation Courses listed above, as well as Directed Electives selected by the relevant general academic institutions in compliance with the transfer rules in Ch. 4, Subchapter. B, including 19 TAC §§4.23(4), 4.32(b)(3), and 4.33.

General academic institutions will be required to transfer these courses and apply them for academic credit towards degree programs with majors in the following CIP Codes:

43.0104: Criminal Justice / Safety Studies

43.0102: Corrections

43.0103: Criminal Justice / Law Enforcement Administration

43.0107: Criminal Justice / Police Science

43.0110: Juvenile Corrections

45.0401: Criminology

Written comments about the proposed changes must be sent to Elizabeth Mayer, Policy Director, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email to Elizabeth.Mayer@highered.texas.gov. Comments must be **received by 5:00 p.m., January 14, 2022**, to be considered.

TRD-202104661

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Filed: November 19, 2021



### Texas Department of Insurance

Notice

Texas Windstorm Insurance Association - Application Form Filings

Reference Nos. P-1121-22, P-1121-23, P-1121-24, P-1121-25

SERFF State Tracking Nos. S696980, S696981, S696982, S696983

In accordance with 28 TAC §5.4911, the Texas Windstorm Insurance Association (TWIA) has filed revised residential application forms with the Texas Department of Insurance for approval:

- Dwelling policy application
- Condominium policy application
- Manufactured home policy application
- Tenant policy application

TWIA is implementing an upgraded policy administration system and intends to use these applications in the upgraded system. As a part of this process, TWIA is transitioning from electronic applications to printable applications. TWIA explains that the applications will still be filled out electronically but will result in printable final products that are easier for agents and policyholders to review. TWIA notes that the information requested in the revised application forms will be substantially similar to the information requested in the existing application forms. This transition is part of TWIA's policy administration system upgrades, planned for release at the end of April 2022.

You can see the revised application forms, TWIA's description of the filings, and other supporting information online at [www.tdi.texas.gov/submissions/indextwia.html#form](http://www.tdi.texas.gov/submissions/indextwia.html#form). You can also get a copy of the filings from the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

**Public Comment:** Send comments on the application form filings to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030 by 5:00 p.m., central time, on January 3, 2022.

**Hearing Requests:** To request a public hearing about the application form filings, you must submit a request separately by 5:00 p.m., central time, on December 23, 2021. Send the request for a hearing by email to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or by mail to the Texas Department of Insurance, Office of the Chief Clerk, MC-GC-CCO, P.O. Box 12030, Austin, Texas 78711-2030.

TRD-202104658  
James Person  
General Counsel  
Texas Department of Insurance  
Filed: November 19, 2021

## Legislative Budget Board

### LBB Budget Execution Proposal

Pursuant to Texas Government Code, Section 317.002, this budget execution order is proposed for the following action affecting items of appropriation made by Senate Bill No. 1, General Appropriations Act, Acts of the 87th Legislature, Regular Session, 2021.

There are not sufficient funds appropriated to the Secretary of State to ensure election integrity for the 2022-2023 state fiscal biennium and this insufficiency of funds creates an emergency. We therefore propose that:

From appropriations made to the Texas Department of Criminal Justice by Senate Bill No. 1, General Appropriations Act, Acts of the 87th Legislature, Regular Session, 2021, the amount of \$4,000,000 in General Revenue appropriated for fiscal year 2023 in Strategy C.1.1.

Correctional Security Operations, shall be transferred to the Secretary of State for use during the 2022-2023 state fiscal biennium, for the purpose of ensuring election integrity.

Signed by Dan Patrick

Lieutenant Governor

Joint Chair, Legislative Budget Board

Signed by Dade Phelan

Speaker of the House

Joint Chair, Legislative Budget Board

Signed by Jane Nelson

Chair, Senate Finance Committee

Signed by Greg Bonnen

Chair, House Appropriations Committee

TRD-202104682

Stewart Shallow

General Counsel

Legislative Budget Board

Filed: November 19, 2021

## Texas Water Development Board

### Agriculture Conservation Request for Application

The Texas Water Development Board (TWDB) solicits a Request for Applications for Fiscal Year 2022 Agricultural Water Conservation Grants. The total amount of the grants to be awarded under this Request for Applications by the TWDB shall not exceed \$1,200,000 from the Agricultural Water Conservation Fund. The rules governing the Agricultural Water Conservation Program may be found in 31 Texas Administrative Code, Chapter 367.

### Summary of the Request for Applications

Solicitation Date (Opening): date published in the *Texas Register*

Due Date (Closing): 2:00 p.m., Wednesday, February 9, 2022

Anticipated Award Date: May 2022

Estimated Total Funding: up to \$1,200,000 total

Eligible Grant Amount: up to \$1,200,000; local match is encouraged

Eligible applicants: state agencies and political subdivisions (as defined by 31 Texas Administrative Code, §367.2)

Contact: Kyla Peterson, Agricultural Water Conservation Program, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, Phone: (512) 475-1525, E-mail: [kyla.peterson@twdb.texas.gov](mailto:kyla.peterson@twdb.texas.gov).

### Agricultural Water Conservation Grant Goals

Projects awarded funding must further water conservation in the state and support the implementation of water conservation water management strategies in the state water plan (Texas Water Code §§17.900-17.902; 31 Texas Administrative Code §367.5). To receive consideration, projects must meet the eligibility criteria and achieve the following goals:

(A) Improve irrigation efficiency through irrigation system improvements, such as the adoption of irrigation metering, irrigation scheduling practices, and irrigation district interconnections

(B) Enhance resilience to weather extremes and climate variability

(C) Promote innovation in agriculture by incorporating the latest water conservation technological advancements

### **Agricultural Water Conservation Grant Actions and Objectives**

To achieve the aforementioned goals, the project description, scope of work, and deliverables should incorporate as many as possible of the following actions and objectives:

- (1) Quantify actualized water savings with proven methodology and provide baseline water usage prior to project implementation
- (2) Engage agricultural producers and water managers through educational outreach in the form of field days, workshops, seminars, or demonstrations in classroom settings and on farms involved in the projects
- (3) Promote the adoption of innovative water conservation practices and technologies that result in improvements to irrigation efficiency and soil health
- (4) Identify methods to measure and report water conservation performance metrics such as water usage, soil water holding capacity, and infiltration
- (5) Determine the long-term sustainability, feasibility, and profitability of the conservation practice(s) by quantifying the return on investment
- (6) Build upon the success of existing agricultural water conservation efforts
- (7) Leverage funding support from local, state, federal, and private industry partners

Funding recipients must submit annual reports, irrigation water use data, and an estimate of actual water savings realized through the implementation of the project for a period of three to five years. Additional details and the exact scope of work will be negotiated with selected applicant(s) and may include a comprehensive final report upon project completion.

### **Grant Amount**

Through this announcement, the TWDB has up to \$1,200,000 available from the Agricultural Water Conservation Fund for Fiscal Year 2022 Agricultural Water Conservation Grants. The TWDB awards these funds through a statewide competitive grants process. The TWDB evaluates all proposals based upon the specific criteria set forth in this solicitation and application instructions.

Eligible costs are those directly attributed to the project including planning, design, purchase, acquisition, installation, construction, monitoring, reporting, administration, management, educational outreach, and dissemination of project findings. Indirect expenses such as the applicant's overhead are not eligible for reimbursement and will not count towards the local match when being evaluated by the technical review team. Eligible travel expenses of the contractor and their subcontractors are limited to the maximum amounts authorized for state employees by the General Appropriations Act. Additionally, any out-of-state travel expenses must be directly related to the approved scope of work in the contract and should be pre-approved by the Executive Administrator, or designated staff, prior to reimbursement.

### **Application Instructions**

Applications must be consistent with the format provided in the Agricultural Water Conservation Grant Application instructions, which are located on the TWDB website at: [http://www.twdb.texas.gov/about/contract\\_admin/request/](http://www.twdb.texas.gov/about/contract_admin/request/).

Application instructions are also available upon request from Kyla Peterson, (512) 475-1525, [kyla.peterson@twdb.texas.gov](mailto:kyla.peterson@twdb.texas.gov).

Grant applicants must submit one digital copy to Bid-room@twdb.texas.gov by the Closing Due Date, February 9, 2021, at 2:00 p.m.

Please include the subject line of "FY 22 Ag Grant App, [Entity Name], [Amount]."

Contact TWDB if you have any questions regarding qualifications or grant contract specifics.

### **Application Criteria and Selection Process**

Prior to technical review, each application will be screened for completeness and compliance with the provisions of this notice. Incomplete applications and those that do not meet the provisions of this notice and the requirements of 31 Texas Administrative Code Chapter 367.5-367.7, as identified in the application instructions, may be eliminated from competition. Applications meeting the provisions of this notice will be scored by a technical review panel. 31 Texas Administrative Code Sections 367.8 and 367.9 require that in reviewing an application for an agricultural water conservation grant, the TWDB shall consider (1) degree to which the applicant has used other available resources to finance the use for which the application is being made; (2) willingness and ability of the applicant to raise revenue; (3) commitment of the applicant to agricultural water conservation; and, (4) the water conservation benefits that will be gained by making the grant. Priority consideration may be given in the scoring and ranking of applications to projects that focus on quantifying water savings.

Prior to approving a grant, the TWDB must find that the grant funds will (1) supplement rather than replace money of the applicant (to aid in making this determination, the applicant must provide an operating budget illustrating the financial need for the grant funds); (2) serve the public interest (in making this finding the TWDB shall include a finding that the grant will assist in the implementation of a water conservation water management strategy identified in the most recent applicable approved regional water plan or state water plan); and, (3) further water conservation in the state (TWC §§17.900-17.902).

In addition to the required considerations and findings, the technical review panel will further evaluate the applications using the following criteria: (1) sound and practical approach for implementing project as per the Request for Applications guidelines, by achieving the Agricultural Water Conservation Program Goals; (2) clearly identified tasks that incorporate the Agricultural Water Conservation Project Actions and Objectives, deliverables, products, and reporting timelines; (3) staff with the technical expertise needed to carry out the project; and, (4) proposed cost estimates (budget) that are reasonable, adequately justified, and include supplemental funding sources. Priority consideration may be given to projects focused on realized water savings.

### **Funding and Partial Funding Provisions**

The TWDB reserves the right to reject all proposals and make no awards under this announcement. In addition, the TWDB reserves the right to partially fund proposals by funding discrete activities, portions, or phases of a proposed project. The TWDB also reserves the right to award funding in an amount greater than any stated limits per project, if applicable. If the TWDB decides to partially fund a proposal, it will do so in a manner that does not prejudice any applicants or affect the basis upon which the proposal, or portion thereof, was evaluated or selected for award, and that maintains the integrity of the competition and the evaluation/selection process. The TWDB reserves the right to reject parts of any or all applications if staff determines that the application(s) does not adequately meet the required criteria or if the funding available is less than the requested funding.

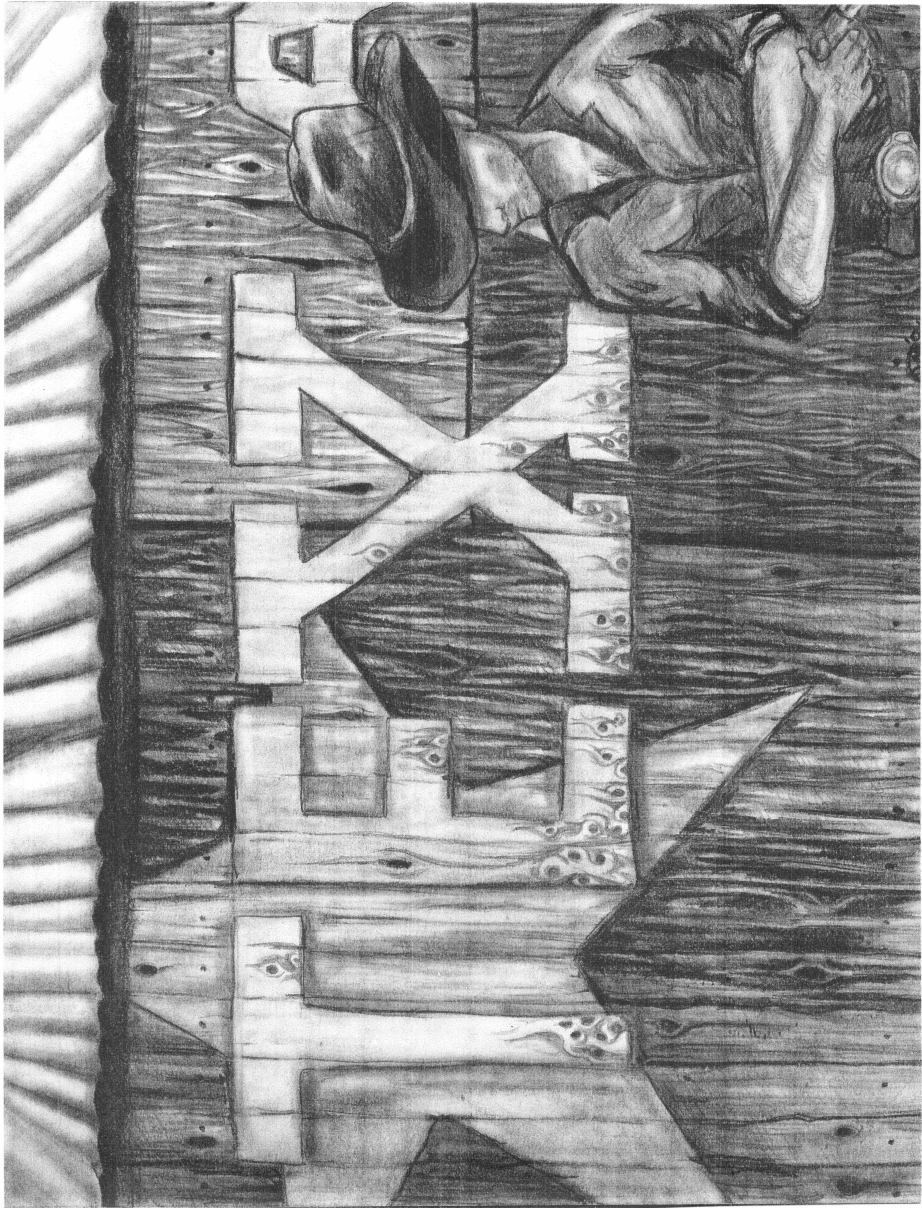
**Negotiations with Selected Applicants**

The applicable scope of work, deliverables, timelines, budgets, and contract terms will be negotiated after the TWDB awards the selected applicants. Failure to arrive at mutually agreeable terms of a contract with the selected applicant shall constitute a rejection of the Board's offer and may result in subsequent negotiations with other applicants.

TRD-202104689

Ashley Harden  
General Counsel  
Texas Water Development Board  
Filed: November 19, 2021





## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 46 (2021) is cited as follows: 46 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “46 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 46 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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